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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1448.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM FLOYD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED OCTOBER 17, 1890.

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vs.

WILLIAM FLOYD.

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1 In the circuit court of the United States for the district of Oregon, April term, 1889.

Be it remembered, that on the 31st day of August, 1889, there wus duly filed in the circuit court of the United States for the district of Oregon a bill of complaint, in words and figures as follows, to wit:

2 In the circuit court of the United States for the district of Oregon.

To the honorable the judges of the circuit court of the United States for the district of Oregon:

Comes now your orator, W. H. H. Miller, the Attorney-General of the United States of America, and in virtue of the provisions of an act of the Congress of the United States entitled "An act providing in certain cases for the forfeiture of wagon-road grants in the State of Oregon," approved March 2, 1889, exhibits and presents this bill of complaint in behalf of the United States and against William Floyd.

3 I. And thereupon your orator shows to your honors that on the 25th day of February, A. D. 1867, the Congress of the United States passed, and the President duly approved, an act granting to the State of Oregon to aid in the construction of a wagon road from Dalles City, on the Columbia River, by way of Camp Watson, Canyon City, Mormon or Humboldt Basin, to a point on Snake River opposite Fort Boisé, in Idaho Territory, the alternate sections of public land, designated by odd numbers, to the extent of three sections on each side of said road; that said act provided that the lands granted should be exclusively applied to the construction of the road and to no other purpose; that they should be disposed of only as fast as the work upon the road progressed; that lands lying within the limit fixed by said act, and theretofore reserved or appropriated, should be reserved from the operation of said act except so far as it might be necessary to locate the road over the same, in which case a right of way to the width of one hundred feet was granted; that the said act further provided that the grant should not embrace mineral lands of the United States; that the land granted thereby to the State of Oregon should be disposed of by the legislature thereof for the uses and purposes therein set forth and for no other purposes; that the road should be and remain a public highway for the use of the United States, free from toll or other charges upon the transportation of any property, troops, or mails of the United States, and also that the road should be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road and in such other special manner as the State of Oregon might prescribe; that the said act also authorized the State of Oregon to locate and use in the construction of said road an additional amount of the public lands not previously reserved to the United States nor otherwise disposed of, and not exceeding ten miles in distance from the general route of the road, and equal to the amount reserved from the operation of the act, said lieu lands to be selected in alternate odd sections as provided therein; that said act further provided that the lands thereby granted to the State of Oregon should be disposed of only in the following manner, that is to say: when the governor of the State should certify to the Secretary of the

Interior that ten coterminous miles of said road were completed, then a quantity of land granted by the act, not exceeding thirty sections, might be sold, and so on from time to time until said road should be completed, and if the road was not completed within five years, no further sales should be made, and the lands remaining unsold should revert to the United States, and also that the surveyor general of the district of Oregon should cause the lands granted by the act to be surveyed at the earliest practicable period after the said State should have enacted the necessary legislation to carry the said act of Congress into effect.

II. And your orator further shows to your honors that on the 20th day of October, A. D. 1868, the legislative assembly of the State of Oregon passed, and the governor approved, an act entitled "An act dedicating certain lands to Dalles Military Road Company," which act, after setting forth the act of Congress aforesaid, granted to Dalles Military Road Company all lands, rights of way, rights, privileges, and immunities granted or pledged to the State of Oregon by said act of Congress aforesaid, for the purpose of aiding said Dalles Military Road Company in constructing the road mentioned and described in said act of Congress aforesaid, and upon the conditions and immunities therein prescribed. And further, that the said act of the said legislative assembly granted and pledged to the said Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which might thereafter be granted to the State of Oregon to aid in the construction of said road, for the purposes and upon the conditions mentioned in said act of Congress, or which might be mentioned in any further grant of money or land to aid in constructing said road; and said act of the legislative assembly of the State of Oregon authorized the said Dalles Military Road Company to locate, subject to the approval of the governor of the State of Oregon, the land within the ten-mile limit prescribed by said act of Congress aforesaid, in lieu of lands reserved to or disposed of by the United States, and lying and being within the limits of the grant as described in the first section of the act of Congress aforesaid.

III. And your orator further shows to your honors that the State of Oregon never at any time passed any laws whatsoever for the special purpose of carrying the act of Congress aforesaid into effect, but long before the passage and approval of said act of Congress, and on the 14th day of October, A. D. 1862, the legislative assembly of the State of Oregon passed an act entitled "An act providing for private incorporations and the appropriation of private property therefor," which was approved by the governor of Oregon on said day last aforesaid, which act provided, among other things, that any road, other than a railway, constructed by a corporation formed under the said law, should be cleared of standing timber for thirty feet in width; that said road should have a track in the center not less than sixteen feet in width finished and kept in good traveling condition, except when the cut of said road is six feet or more deep on either side, in which case said road need not be more than ten feet wide, with turn-outs of sixteen feet in width for every quarter of a mile of said narrow track. And said act of the legislative assembly of Oregon last aforesaid also provided that all streams or other waters upon the line of such roads should be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such

streams or other water, or if such stream or other water form the boundary between two counties, then the county court of either of said counties might authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court might prescribe and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court might authorize such corporation to connect their road with a ferry at the date of said act or thereafter established over such stream or other water under the general statutes in relation to ferries, and that said provisions of said act of the legislative assembly of the State of Oregon last aforesaid have been in force at all times since the 14th day of October, 1862, and still remain in force.

IV. And your orator further shows to your honors that the Dalles Military Road Company is a private corporation purporting to have been incorporated on the 30th day of March, A. D. 1868, under and by virtue of the general laws of the State of Oregon providing for private incorporations and the appropriation of private property therefor; that the enterprise and business in which the said corporation proposed to engage was the location and construction of a clay road from Dalles City, in the county of Wasco, Oregon, by way of Camp Watson and Canyon City, to a point on Snake River opposite Fort Boisé, in Idaho Territory, about two miles below the mouth of Owyhee River; that James K. Kelly, N. H. Gates, and Orlando Humason were the incorporators thereof.

That on the 11th day of January, A. D. 1871, the Dalles Military Wagon Road Company, by Orlando Humason, Victor Trevitt, O. S. Savage, O. W. Weaver, and B. W. Mitchell, the then directors thereof, in pursuance of the unanimous vote of the stockholders thereof, made and filed supplementary articles of incorporation; that said supplementary articles of incorporation contained but one article, which is as follows:

"The enterprise and business in which the said corporation proposes to engage, in addition to the location and construction of a clay road as provided in the original articles of incorporation, is to accept and receive any and all grants of land and other things of value from the United States and the State of Oregon, and to sell and convey, and to purchase and to hold land and other property which the directors of said corporation may deem necessary and convenient for the interests thereof; and to engage in any business incident to and connected with receiving any such grant, and in selling, conveying, purchasing, and holding any land or property that may come into the possession of said company, also to establish and keep a toll road on any part of the road belonging to said company."

That said private corporation is still in being, and that the officers thereof are James K. Kelly, president, and C. N. Thornbury, secretary.

V. And your orator further shows to your honors that on the first day of January, A. D. 1869, and on divers other days between said day and the 23d day of June, 1869, the officers, stockholders, and agents of The Dalles Military Road Company, and other persons acting in their interest and in the interest of said company, falsely and fraudulently represented to George L. Woods, then the governor of Oregon, that said road had been constructed as by law required; they, the said officers, stockholders, agents, and representatives and other persons aforesaid, then and there well know-

ing that said representations were false and that the said road had not been constructed in any respect according to law or at all; that they and each of them made the said false and fraudulent representation for the sole and only purpose of fraudulently procuring from the said George L. Woods, as governor of the State of Oregon, a certificate declaring that the said road had been constructed in accordance with the act of Congress aforesaid approved February 25, 1867, and of the act of the legislative assembly aforesaid approved February 20, A. D. 1868.

That the said George L. Woods, then governor of Oregon, in consequence of said false and fraudulent representations made as aforesaid by the persons aforesaid, made and issued the following certificate:

EXECUTIVE OFFICE,
Salem, Oregon, June 23, 1869.

I, George L. Woods, governor of the State of Oregon, do hereby certify that this plat or map of The Dalles military road has been duly filed in my office by The Dalles Military Road Company, and shows, in connection with the public surveys, as far as said public surveys are completed, the location of the line of route as actually surveyed and upon which their road is constructed in accordance with the requirements of an act of Congress approved February 25, 1867, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boisé, on Snake River," and with the act of the legislative assembly of the State of Oregon approved October 20, 1868, entitled "An act donating certain lands to Dalles Military Road Company." I further certify that I have made a careful examination of said road since its completion, and that the same is built in all respects as required by the said above-recited acts, and that said road is accepted.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Oregon.

Done at Salem, Oregon, June 23, 1869.

GEO. L. WOODS.

Attest: SAMUEL E. MAY,
[SEAL.] *Secretary of State.*

6 VI. And your orator further shows to your honors that it was not and is not true that The Dalles Military Road Company had at any time whatsoever constructed, or caused to be constructed, a road upon any line of route located or surveyed by said company or by any other corporation, person, or persons, anywhere within the limits of the grant of land provided for in the act of Congress aforesaid, or at all, and this the said George L. Woods, governor aforesaid, then and there well knew, and that it was not and is not true that the said governor made a careful, or any, examination of any road constructed or owned by The Dalles Military Road Company.

VII. And your orator further shows to your honors that said certificate was procured by the said Dalles Military Road Company, by and through the false and fraudulent representations aforesaid by the officers, stockholders, agents, and persons aforesaid, in order to enable it falsely and fraudulently to obtain possession and control of the lands lying within the

limits of the grant of land provided for in the act of Congress aforesaid, and that the acceptance of said pretended road by the governor aforesaid was a fraud upon the United States of America.

VIII. And your orator further shows to your honors that the said road never was built, graded, bridged, cleared, or constructed either in whole or in part so as to be a public highway, or so as to permit of the transportation of any property, troops, or mails of the United States over the same, and was not and never has been maintained as a public highway by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits provided for by the said act of Congress.

IX. And your orator further shows to your honors that notwithstanding the provisions of the act of Congress declaring that the lands granted thereby should be exclusively applied to the construction of the road and to no other purpose, neither the said lands, nor the proceeds thereof, have ever been exclusively, or at all, applied to the construction of the road, or any part thereof, or to the construction of any bridges thereon, or the establishment of any ferries on any streams along the line of the road or any part thereof.

X. And your orator further shows to your honors that the lands granted by the said act of Congress were not and have not been disposed of by the State of Oregon, or by the legislative assembly thereof, for the purposes expressed in said act of Congress, or any thereof.

XI. And your orator further shows to your honors that on the eighteenth day of June, A. D. 1874, the Congress of the United States passed and the President duly approved an act which, after reciting that certain lands had theretofore by acts of Congress been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State, and that there was no existing law providing for the issuing of formal patents for said lands, provided as follows:

"That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public act, have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon the payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

7 XII. And your orator further shows to your honors that on the 19th day of June, A. D. 1876, the President of the United States, being deceived, misled, and imposed upon by the false and fraudulent certificates hereinabove set forth, issued to the defendant, The Dalles Military Road Company, a patent for 126,910 23-100 acres of land included in the grants made or intended to be made by said acts of Congress, which patent was duly recorded on the 14' day of January A. D. 1887, in volume K of the records of deeds for Wasco County, Oregon, on pages 452 to 469.

XIII. And your orator further shows to your honors that on the 31st day of May, A. D. 1876, The Dalles Military Road Company, by its then president, P. J. Martin, and its then secretary, C. N. Thornbury, pursuant to a resolution of the board of directors thereof passed on the day last aforesaid, made, executed, and delivered to Edward Martin a deed, a certified copy of which is hereunto attached, marked Exhibit A, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 31st day of May, A. D. 1876, and was recorded in record of deeds for Wasco County, Oregon, in volume E, on pages 435, 436, 437, and 438.

That on the 21st day of March, A. D. 1882, Eleanor Martin, as the guardian of the person and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minor heirs of Edward Martin, deceased, under an order and license of the county court of Wasco County, Oregon, made, executed, and delivered to Peter Donahue and James Phelan a deed, a certified copy of which is hereunto attached, marked Exhibit B, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 5th day of April, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 82, 83, and 84.

That on the 3rd day of August, A. D. 1882, James Phelan and Alice, his wife, made, executed, and delivered to Peter Donahue a deed, a certified copy of which is hereto attached, marked Exhibit C, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 13th day of September, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 275, 276, and 277.

That on the 4th day of August, A. D. 1884, Peter Donahue and Annie, his wife, D. V. B. Henaire and Mary, his wife, Eleanor Martin, T. J. Martin and Margaret A., his wife, James V. Martin, Thomas V. Martin and Ada B., his wife, Edward Martin, Barton L. Walker and Genevieve E., his wife, made, executed, and delivered to The Eastern Oregon Land Company, a private incorporation, a deed, a certified copy of which is hereunto attached, marked Exhibit D, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 15th day of October, A. D. 1884, at 10.30 o'clock a. m., and was recorded in the record of deeds of Wasco County, Oregon, in volume J, on pages 119, 120, 121, 122, 123, and 124.

That each and every of said deeds conveyed the lands in bulk, and purported to grant to the respective grantees all the lands lying and being in the State of Oregon, granted or intended to be granted to the State of Oregon by the act of Congress first hereinabove pleaded and granted or intended to be granted by the State of Oregon to The Dalles Military Road Company by the act of the legislative assembly first hereinbefore pleaded, and that the substantive parts of both of said acts are recited in all the said deeds and expressly made parts of each thereof.

8 XIV. And your orator further shows to your honors, that on the 4 day of January, 1887, the Eastern Oregon Land Company executed and delivered to the defendant, William Floyd, a deed purporting to convey to him the south half of section twenty-seven, township two north, range fourteen east, of the Willamette meridian; and the north half *and*

the north half of the south half of section thirty-three, township two north, range fourteen east, of the Willamette meridian; and all of section thirty five in township two north, of range fourteen east, of the Willamette meridian, containing 1,440 acres of land, situate in Wasco County, Oregon, which deed is recorded on pages 495 and 496, in volume K of the record of deeds in said county, a copy of which deed is hereto annexed and made part of this bill of complaint.

That the land described in and by said deed, so made and delivered to the defendant, William Floyd, are part and parcel of the lands granted by the act of Congress first hereinbefore pleaded.

That the defendant, William Floyd, grantee named in said deed, entered into possession of said land under the same and claims to own and hold said lands adversely to the United States.

XV. And your orator further shows to your honors that the defendant, William Floyd, and each and every of the grantors and grantees mentioned in the deeds hereinabove described, at the time of the execution and delivery of the deeds aforesaid, and at the time of the accruing of their respective pretended interests in said lands aforesaid, had full knowledge that the road provided for by the said act of Congress first aforesaid had not at any time been constructed and maintained as required by the said act of Congress and by the laws of the State of Oregon, so as to be in any sense whatsoever a public highway or so that it could be used by the United States or by any of the citizens or residents thereof as a public high-
9 way, or so that the United States could transport its property, troops, or mails over the same; and also had full knowledge that no grades had been established or constructed upon said road, or any part thereof; that no ferries had been established or maintained; that no clearing done, or any part thereof; no bridges built over any streams on the line thereof, and no cuts made and no turnouts constructed anywhere on said line of road by The Dalles Military Road Company, or any of the grantors or grantees mentioned and described in any of the said deeds aforesaid; and that no bridges had been built or maintained over any streams on the line of said road; and had full knowledge that said road was not begun nor completed within five years from the date of the passage of the act of Congress first aforesaid, and that it had never been begun, constructed, or maintained, and that each and every of said defendants well knew that the statements made in the certificate of the governor of Oregon hereinabove set forth were false; that the governor did not, at any time whatsoever, examine the road referred to in his said certificate, and that said certificate had been procured by false and fraudulent representations as aforesaid, and that the patent aforesaid was found to be issued upon said false and fraudulently procured certificate.

Prayer.

Your orator therefore prays that the patent described in this bill of complaint be declared fraudulent and void; that the certificate described in this bill of complaint be declared fraudulent and void; that the deeds described in this bill of complaint be declared fraudulent and void, and the land therein described be restored to the public domain; that the United States have such other and further relief as to equity seemeth meet; that

the United States writ of subpœna may issue requiring the defendant to appear in this honorable court under certain pains and penalties therein prescribed and answer the foregoing bill of complaint; and that the defendants pay the costs, expenses, and disbursements of this suit.

O. W. CHAPMAN,
Acting Attorney-General.

10 LEWIS L. MCARTHUR,
U. S. Attorney for Oregon.
WILLIAM CAREY JOHNSON,
Special Assistant U. S. Attorney.

11 EXHIBIT A.

Certified copy of deed. *Dalles Military Road Company to Edward Martin. Dated May* 31, 1876.

[Filed for record on the 31st day of May, A. D. 1876.]

This indenture, made and entered into this 31st day of May, A. D. 1876, between The Dalles Military Road Company, a corporation duly incorporated, organized, and existing under the laws of the State of Oregon, having its principal office and place of business at Dalles City, Wasco County, State of Oregon, the party of the first part, and Edward Martin, of the city and county of San Francisco, State of California, the party of the second part, witnesseth: That the said party of the first part, The Dalles Military Road Company, a corporation as aforesaid, for the sum of $125,000, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, released and conveyed, and by these presents it does grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns, all the lands lying and being in the State of Oregon granted or intended to be granted to said State by act of Congress approved February 25, A. D. 1867, entitle' "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," and the right to a patent or patents for said lands granted to said party of the first part by act of Congress approved June 18, 1874, entitled "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," which said lands were granted or intended to be granted by the State of Oregon to the said Dalles Military Road Company by an act of the legislative assembly of said State of Oregon approved October 20, 1868, entitled "An act donating certain lands to The Dalles Military Road Company," which said several acts are hereby made part hereof, and all the right, title, and interest acquired or to be acquired by the party of the first part under the said several acts hereinbefore referred to, or either *to* them, and also all future right, title, interest, claim, property, and demand which the party of the first part may at any time hereafter acquire to said lands, or any part thereof, or to any lands or to any patents or patent therefor by virtue of said acts of Congress, or either of them, and said act of the legislative assembly of the State of Oregon, whether said lands are surveyed or unsurveyed, by virtue of any further compliance or any preceding compliance with the requirements of said acts or otherwise, subject to the payment by said party

of the second part of whatever may be due the United States for entering and patenting said lands. It being the intention of the party of the first part to convey, and it does hereby convey, to the party of the second part the said lands, and all of the right, title, and interest acquired by said party of the first part under said acts, or either of them, in said lands, or any part thereof, or any lands, being all the interest in and to the lands and premises hereinbefore described, together with any and all further interest that it may hereafter acquire or now possess by virtue of any further compliance with all or any of said several acts referred to, reserving and excepting from this conveyance, however, all sales of land heretofore made by the party of the first part.

The said party of the first part hereby covenants and agrees with the party of the second part that it will at any time when desired by said party of the second part to him, his heirs and assigns, any further conveyance and assurance of title to the lands aforesaid and every part thereof, and said party of the first part covenants and agrees with said party of the second part to keep up its corporate organization, and to do every act and thing necessary and requisite to *to* perfect the title to all the lands included in the grant aforesaid.

12 To have and to hold the lands hereby granted and every part and parcel thereof unto the *the* said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has caused its corporate seal to be affixed to these presents and the same to be signed by its president and secretary by resolution of the board of directors thereof duly passed to that effect at Dalles City, Wasco County, State of Oregon, this 31st day of May, A. D. 1876.

P. J. MARTIN,
President D. M. R. Co.
C. N. THORNBURY,
Secretary D. M. R. Co.

And witness the seal thereof—
[SEAL.]

Signed, sealed, and delivered in the presence of—
BEN. KORTEN.
J. B. CONDON.

STATE OF OREGON, *County of Wasco:*

On the 31st day of May, A. D. 1876, before the undersigned, a notary public in and for Wasco County, State of Oregon, came the above-named P. J. Martin, president of The Dalles Military Road Company, and C. N. Thornbury, secretary of said company, both of whom are well known to me to be the persons described in and who executed the foregoing conveyance, and the said P. J. Martin acknowledged to me that he had executed the said conveyance as president of the said Dalles Military Road Company, for the objects and purposes therein stated, in compliance with a resolution passed by the board of directors of said company on the 30th day of May, A. D. 1876, and the said C. N. Thornbury acknowledged to me that he had executed the said conveyance for the purposes therein set forth and in attestation thereto affixed to said conveyance the corporate seal

of the said Dalles Military Road Company as secretary thereof, in compliance with a resolution of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year first above written in this certificate.

[SEAL.] JAMES B. CONDON,
Notary Public, Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from The Dalles Military Road Company to Edward Martin, bearing date May 31, 1876, as the same now appears of record at pages 435, 436, 437, and 438, volume E, record of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

[SEAL.] GEO. H. THOMPSON,
Clerk.
By J. M. HUNTINGTON,
Deputy Clerk.

13 EXHIBIT B.

Certified copy of deed, Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, dated March 21, 1882.

[Filed for record on April 5, 1882.]

This indenture, made the 21st day of March, A. D. 1882, by and between Eleanor Martin, the duly appointed and qualified guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, party of the first part, and Peter Donahue and James Phelan, of the city of San Francisco, State of California, parties of the second part, witnesseth:

That whereas on the 3d day of January, A. D. 1882, the county court of Wasco County, in the State of Oregon, made an order and license of sale, authorizing the said party of the first part to sell certain real estate of the said minors, situate in the counties of Wasco, Grant, and Baker, in the State of Oregon, and particularly described in the said order and license of sale, and which said order and license of sale, now on file and of record in the said county court, Wasco County, are hereby referred to and made a part of this indenture; and

Whereas under and by virtue of the said order and license of sale, and pursuant to legal notices given thereof, the said party of the first part, on the 6th day of February, A. D. 1882, at 12 o'clock noon, at the court-house door, at The Dalles, in the county of Wasco, State of Oregon, offered for sale at public auction, and subject to confirmation by the said county court of Wasco County, the portion of the said real estate situated in the said county of Wasco, and specified and described in said order and license of sale, as aforesaid; and at such sale the said parties of the second part be-

came the purchasers of the whole of the said real estate hereinafter particularly described, situated in Wasco County aforesaid, for the sum of $57,500, they being the highest and best bidders, and that being the highest and best sum bid for the same; and

Whereas the said county court of Wasco County, upon a due and legal return of her proceedings under the said order and license of sale made by the said party of the first part on the 24th day of February, 1882, did on the 6th day of March, A. D. 1882, make an order confirming the said sale, and directing conveyances to be made, executed, and delivered to the said parties of the second part, and which order of confirmation, now on file and of record in the said county court of Wasco County, is hereby referred to and made a part of this indenture;

Now, therefore, the said Eleanor Martin, the guardian of the persons and estates of the said minors, James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, as aforesaid, the party of the first part, pursuant to the order last aforesaid of the said county court of Wasco County, for and in consideration of the said sum of $57,500 to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, their heirs and assigns forever, all the right, title, interest, and estate of the said James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, in and to all that part of the lands known as The Dalles military road lands which are situate, lying, and being in the county of Wasco, State of Oregon, the said Dalles military road lands being the alternate sections of the public lands of the United States as surveyed, or to be surveyed, by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been or may hereafter be selected and located, not exceeding 10 miles in distance from said
14 road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon, relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin, and by said Edward Martin, in his life-time, the said lands so previously conveyed not being included in this sale and conveyance, which said lands are listed in part only, and amount to 247,230 acres, more or less. The interest of said minors in and to the above-mentioned and designated lands so sold is five-eighths of three-fourths thereof, subject to the right of dower therein and thereto held by and belonging to Eleanor Martin, the widow of Edward Martin, deceased.

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurt'ances, unto the said parties of the second part, their heirs and assigns, to their sole use, benefit, and behoof forever.

In witness whereof the said party of the first part, guardian as aforesaid, has hereto set her hand and seal the day and year first above written.

[SEAL.] ELEANOR MARTIN,
Guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors.

Signed, sealed, and delivered in the presence of—
T. P. BEACH.
SAM'L S. MURFEY.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 22d day of March, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, residing at the city and county of San Francisco, State of California, Eleanor Martin, guardian of the persons and estate of James Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, to me personally known to be the identical person described in and who executed the foregoing deed, and who acknowledged to me that she executed the same as guardian aforesaid freely, for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of March, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon.

STATE OF OREGON,
County of Wasco, ss:

I, George H. Thompson, county clerk in and for said Wasco County and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, bearing date March 21, 1882, as the same now appears of record at pages 82, 83, and 84, volume "H," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 3d day of September, 1887.

[SEAL.] GEORGE H. THOMPSON,
Clerk,
By J. M. HUNTINGTON,
Deputy Clerk.

15 EXHIBIT C.

Certified copy of deed. James Phelan and wife to Peter Donahue. Dated August 3, 1882.

[Filed for record on September 13, 1882.]

This indenture, made this 3d day of August, A. D. 1882, by and between James Phelan and Alice Phelan, his wife, both of the city and county of San Francisco, State of California, the parties of the first part, and Peter Donahue, of the same place, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $71,625, lawful money of the United States, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part all the right, title, and interest of the parties of the first part in and to the lands known as The Dalles Military Road lands, which are situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon; the said Dalles Military Road lands being the alternate sections of the public lands of the United States, as surveyed or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been, or may hereafter be, selected and located, not exceeding 10 miles in distance from said road, under and in pursuance of the act of Congress entitled, "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon relating or pertaining to the said Dalles Military Road lands, saving and excepting those portions of the said Dalles Military Road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin and by said Edward Martin in his life-time, the said lands so previously conveyed not being included in this sale and conveyance.

The lands hereby conveyed being all and singular the property and premises conveyed to the said James Phelan, one of the parties of the first part, by Eleanor Martin, guardian of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, by three deeds, each bearing date the 21st day of March, A. D. 1882, and recorded, respectively, as follows:

In Wasco County, on the 5th day of April, 1882, in volume H of deeds, page 82.

In Grant County, on the 22d day of April, 1882, in volume E of deeds, pages 9 and 12.

In Baker County, on the 3d day of April, 1882, in volume 9 of deeds, page 150.

Together with the tenements, hereditaments, and appertenances whatsoever to the same belonging or in any wise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever.

In witness w'ereof the said parties of the first part have hereunto set their hands and seals the days and year first above written.

JAMES PHELAN. [SEAL.]
MRS. ALICE PHELAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAM'L S. MURFEY,
WM. B. LATHAM,
As to the signature of James Phelan.
EDWIN F. COREY,
JOHN B. SIMPSON,
As to Alice Phelan.

16 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 3d day of August, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, resident in the city and county of San Francisco, State of California, the within-named James Phelan, to me personally known to be one of the identical persons described in and who executed the within instrument, and acknowledged to me that he executed the same freely, for the uses and purposes therein named.

Witness my hand and official seal as such commissioner this 3d day of August, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon in the State of California.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 12th day of August, in the year 1882, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Oregon to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared Alice Phelan, wife of James Phelan, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me, on an examination separate and apart from her husband, that she executed the same freely, and without fear or compulsion from any one, for the uses and purposes therein named.

Given under my hand and official seal the day and year last aforesaid.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Oregon, office 54 Wall Street, N. Y.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the

county of Wasco, do hereby certify that I have compared the foregoing with the original deed from James Phelan and wife to Peter Donahue, and bearing date August 3d, 1882, as the same now appears of record at pages 275, 276, and 277, of volume "H," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of court this 3d day of September, 1887.

GEORGE H. THOMPSON, *Clerk*,
[SEAL.] By J. M HUNTINGTON,
Deputy Clerk.

17 EXHIBIT D.

Certified copy of deed, Peter Donahue et als. to Eastern Oregon Land Company, dated August 11, 1884.

[Filed October 15, 1884, at 10.30 a. m.]

This indenture, made and entered into this 11th day of August, A. D. 1884, by and between Peter Donahue and Annie Donahue, his wife, D. V. B. Henarie and Mary A. Henarie, his wife, Eleanor Martin, T. J. Martin and Margaret A. Martin, his wife, of the city and county of San Francisco, State of California, and James V. Martin, of the city and county of Los Angeles, State aforesaid, and Thomas S. Martin and Ada B. Martin, his wife, and Edward Martin, of the city of Portland, State of Oregon, and Barton L. Walker and Genevieve E. Walker, his wife, of the city of Washington, District of Columbia, parties of the first part, and the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, and having its office and principle place of business in the city and county of San Francisco, the party of the second part, witnesseth:

Whereas the said parties of the first part are the owners of, and have each an undivided interest in common in, the lands hereinafter mentioned and described in the respective proportions following, to wit:

The said Peter Donahue, three-sixteenths; the said D. V. B. Henarie, four-sixteenths; the said Eleanor Martin, four-sixteenths; the said P. J. Martin, one-sixteenth; the said James V. Martin, one-sixteenth; the said Thomas S. Martin, one-sixteenth; the said Edward Martin, one-sixteenth; and the said Genevieve E. Walker, one-sixteenth. And whereas the said parties of the first part have negotiated with the said party of the second part for the sale of the said lands upon the terms which have been mutually agreed upon by and between the several and respective parties hereto of the first and second parts:

Now, therefore, in consideration of the premises and of the sum of one dollar, lawful money of the United States of America, to each of them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto said party of the second part, its successors and assigns, all those certain lands situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon, granted to the State of Oregon

by the act of Congress of the United States of America entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February 25, A. D. 1867, and granted to the said Dalles Military Road Company by an act of the legislative assembly of the State of Oregon entitled "An act donating lands to The Dalles Military Road Company," approved October 20, 1868.

Being the lands conveyed to Edward Martin, now deceased, by the said The Dalles Military Road Company by its deed bearing date May 31, 1876, and duly recorded in the office of the county clerk of the said county of Wasco on the 31st day of May, A. D. 1876, in volume E, page 435, and in the office of the county clerk of the said county of Grant on the 3d day of June, A. D. 1876, in book C, page 195, and in the office of the county clerk of the said county of Baker on the 7th day of June, A. D. 1876, in book D of deeds, page 200, and commonly known and designated as The Dalles military road lands, a portion of which lands are embraced in the county of Crook, recently formed, or about to be formed, of and from a portion or portions of said Wasco and Grant Counties.

18 Saving and excepting therefrom and from the operation of this conveyance certain portions and parcels of said Dalles military road lands heretofore sold and conveyed by the said Edward Martin, grantee thereof as aforesaid, in his life-time, and by his successors in interest.

The several and respective interests of the several and respective parties of the first part by them respectively herein and hereby conveyed being subject to the proper and respective proportions of the debts, charges, and expenses belonging thereto respectively.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said parties of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

P. DONAHUE.	[SEAL.]	JAS. V. MARTIN.	[SEAL.]
ANNIE DONAHUE.	[SEAL.]	THOS. S. MARTIN.	[SEAL.]
D. V. B. HENARIE.	[SEAL.]	ADA B. MARTIN.	[SEAL.]
MARY A. HENARIE.	[SEAL.]	EDWARD MARTIN.	[SEAL.]
ELEANOR MARTIN.	[SEAL.]	BARTON L. WALKER.	[SEAL.]
P. J. MARTIN.	[SEAL.]	GENEVIEVE E. WALKER.	[SEAL.]
MARGARET A. MARTIN.	[SEAL.]		

Signed, sealed, and delivered in the presence of—

A. Maude Henarie and Eugene W. Levy, as to the signature of Mary A. Henarie.

Annie Martin and Eugene W. Levy, as to signature of Margaret A. Martin.

Eugene W. Levy and Charles T. Stanley, as to signatures of P. Donahue and Annie Donahue.

Eugene W. Levy and T. P. Beach, as to signature of D. V. B Henarie.
Eugene W. Levy and T. P. Beach, as to signature of Eleanor Martin.
Eugene W. Levy and T. P. Beach, as to signatures of P. J. Martin and James V. Martin.
Eugene W. Levy and Charles T. Stanley, as to signature of Edward Martin.
Eugene D. White, Arthur E. Sloan, witnesses to signature of Thomas S. Martin.
Eugene D. White and Arthur E. Sloan, witnesses to signature of Ada B. Martin.
Witnesses to signatures of Barton L. Walker and Genevieve E. Walker, John E. Beal, Albert D. Gilme.

STATE OF OREGON, *County of Multnomah, ss:*

Be it remembered that on this 18th day of August, 1884, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Thomas S. Martin and Ada B. Martin, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same; and Ada B. Martin, wife of the said Thomas S. Martin, on an examination made by me separate and apart from her husband acknowledged to me that she executed the same freely and voluntarily, and without fear, coercion, or compulsion from any one.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] EUGENE D. WHITE,
Notary Public for Oregon.

19 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared James V. Martin and Edward Martin, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Peter Donahue and Annie Dona-

hue, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally and duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Annie Donahue, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared D. V. B. Henarie and Mary A. Henarie, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Mary A. Henarie, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared P. J. Martin and Margaret A. Martin, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Margaret A. Martin, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 25th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commis-

sioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Eleanor Martin (widow), to me personally known to be the identical person whose name is subscribed to, who is described in, and who executed the annexed and within instrument, and she duly acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

On the 12th day of September, A. D. 1884, before me, John E. Beall, a commissioner of deeds for the State of Oregon in and for the District of Columbia, duly appointed, commissioned, and sworn, and residing in the city of Washington, D. C., personally appeared Barton L. Walker and Genevieve E. Walker, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Genevieve E. Walker, on examination separate and apart from her said husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN E. BEALL,
Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Peter Donahue et al. to the Eastern Oregon Land Company, and bearing date August 11, 1884, as the same now appears of record at pages 119, 120, 121, 122, 123, and 124 of volume "J," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEORGE H. THOMPSON,
Clerk,

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

21 *Eastern Oregon Land Co. to William Floyd.*

[Filed Feb'y 12, 1887, at 1.20 p. m.]

This indenture, made the fourth day of January, in the year one thousand eight hundred and eighty-seven, between the Eastern Oregon Land

Company, a corporation duly incorporated under the laws of the State of California, and having its office in the city and county of San Francisco, State of California, the party of the first part, and William Floyd, of the county of Wasco, State of Oregon, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of three thousand two hundred and forty ($3,240) dollars, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, tracts, pieces, or parcels of land situate, lying, and being in the county of Wasco, State of Oregon, known and described as follows, to wit:

First. The south half of section twenty-seven (27), township two (2) north, of range fourteen (14) east, of the Willamette meridian, containing three hundred and twenty (320) acres.

Second. The north half, and north half of south half of section thirty-three (33), township two (2) north, of range fourteen (14) east, of the Willamette meridian, containing four hundred and eighty (480) acres.

22 Third. All of section thirty-five (35), township two (2) north, of range fourteen (14) east, of the Willamette meridian, containing six hundred and forty (640) acres.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said premises and every part and parcel thereof with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever; and the said party of the first part does hereby covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that it has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever whereby or by means whereof the said premises or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, changed or incumbered in any manner or way whatsoever.

In witness whereof the said party of the first part has caused these presents to be signed in its corporate name by its president and secretary and its corporate seal to be hereto affixed the day and year first above written.

T. P. BEACH,
Secretary.

EASTERN OREGON LAND COMPANY,
By JOS. W. WINANS,
President.

Signed, sealed, and delivered in the presence of—
JAMES V. MARTIN,
EUGENE W. LEVY.

23 STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On the fourth day of January, A. D. one thousand eight hundred and eighty-seven, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commssioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Joseph W. Winans, the president, and Thomas P. Beach, the secretary of the Eastern Oregon Land Company, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument as the president and secretary, respectively, of the Eastern Oregon Land Company, and they each severally duly acknowledged to me that they executed the same as the president and secretary, respectively, of said company, for, and on behalf, and in the corporate name of said company, as its free and voluntary act and deed, for the uses and purposes therein mentioned, and that they had affixed thereto the corporate seal of said company in pursuance of the order and resolution of said company directing such deed to be executed by them, by signing the same in the corporate name as president and secretary thereof, and affixing thereto its corporate seal.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner fo *Deeds for Oregon in California.*

24 STATE OF OREGON, *County of Wasco, ss:*

I, Geo. H. Thompson, county clerk in and for Wasco County, State of Oregon, and ex officio clerk of the county court do hereby certify that I have carefully compared the foregoing with the original deed from Eastern Oregon Land Company to William Floyd, dated January 4th, 1887, as the same now appears of record at pp. 495 & 496, Vol. K, Records of Deeds for said Wasco County, in my office and custody, and that it is a true and correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 29 day of Aug., A. D. 1889.

[SEAL.] GEO. H. THOMPSON,
Clerk,
By J. M. HUNTINGTON,
Deputy.

(Endorsed:) Filed Aug. 31, 1890. R. H. Lamson, clerk.

25 And afterwards, to wit, on the 31st day of Aug., 1889, there was issued out of said court a subpœna ad respondendum, in words and figures, as follows, to wit:

26 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 9th day of September, 1889, at the Five-Mile House, Wasco County, in said district, I duly served the within

subpœna ad respondendum upon the therein named Wm. Floyd, and by delivering to him personally a true copy of said subpœna ad respondendum, duly certified to by me as U. S. marshal, together with a copy of the in the within-entitled cause, duly certified to by the clerk of the U. S. circuit court for said district.

JOHN MYERS,
United States Marshal.
By E. SETRULY,
Deputy.

27 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,
vs.
WILLIAM FLOYD, DEFENDANT. } No. 1638. In equity.

Subpœna ad respondendum.

The President of the United States of America to William Floyd, greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court room thereof in the city of Portland, in said district, on the first Monday of October next, which will be the 7' day of October, A. D. 1889, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein the United States is complainant and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna, and to have then and there the same.

Hereof fail not.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 31' day of August, in the year of our Lord one thousand eight hundred and 89, and of the independence of the United States the one hundred and

[SEAL.]

R. H. LAMSON,
Clerk.
By MAURICE MCKIM,
Deputy Clerk.

Memorandum pursuant to equity rule No. 12 of the Supreme Court of the United States:

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

(Indorsed:) No. 1638. In the circuit court of the United States for the district of Oregon. In equity. The United States vs. William Floyd. Subpœna ad respondendum. Returned and filed Sept. 17, 1889. R. H. Lamson, clerk. By D. W. Stevens, deputy clerk.

28 And afterwards, to wit, on the 2d day of October, 1889, there was duly filed in said court an appearance in words and figures as follows, to wit:

29 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
WILLIAM FLOYD. } No. 1638.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor in the above-entitled cause for the defendant, William Floyd.

JAMES K. KELLY,
Solicitor for Deft.

(Indorsed:) No. 1638. In the circuit court of the United States for the district of Oregon. The United States vs. William Floyd. Præcipe for appearance of defendant. Filed and entered Oct. 2, 1889. R. H. Lamson, clerk. By R. B. Lamson, deputy.

30 And afterwards, to wit, on the 5' day of November, 1889, there was duly filed in said court a stipulation in words and figures as follows, to wit:

31 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
WILLIAM FLOYD.

It is hereby stipulated and agreed that the defendant in the above-entitled suit need not further plead until the determining of the pleas in the suit of The United States against The Eastern Oregon Land Company, or until the further order of the court.

L. L. MCARTHUR,
Attorney for Plaintiff.
JAMES K. KELLY,
Attorney for Defendant.

(Endorsed:) Filed November 5, 1889. R. H. Lamson, clerk.

32 And afterwards, to wit, on the 5th day of May, 1890, there was duly filed in said court a demurrer to bill, in words and figures as follows, to wit:

33 In the circuit court of the United States for the district of Oregon.

Demurrer of William Floyd, the defendant to the bill of complaint of the United States, by W. H. H. Miller, Attorney-General of the United States, against the defendant in chancery exhibited:

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in

manner and form as therein set forth, doth demur thereto and for cause of demurrer shows:

That the said complaint hath not in and by its said bill stated such a case as doth or ought to entitle it to any such discovery or relief as is therein sought and craved for from or against this defendant.

Wherefore, and for divers other errors and imperfections therein, this defendant demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill or any of the matters or things therein contained and craves to be hence dismissed with his reasonable costs in this behalf sustained.

JAMES K. KELLY,
Solicitor for Deft.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, James K. Kelly, hereby certify that I am the defendant's
34 solicitor, and that in my opinion the foregoing demurrer is well founded in law.

JAMES K. KELLY,
Solicitor for Deft.

I hereby admit due service of the foregoing demurrer by copy at Portland, Oregon, this May 5, 1890.

FRANKLIN P. MAYS,
U. S. Attorney.

(Endorsed:) Filed May 5, 1890. R. H. Lamson, clerk.

35 And afterwards, to wit, on Wednesday, the 7th day of May, 1890, the same being the 12th judicial day of the regular April term of said court; present, the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to wit:

36 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
WILLIAM FLOYD. } No. 1638.

MAY 7, 1890.

Now, at this day this cause comes on to be heard upon the demurrer to the bill of complaint, the plaintiff appearing by Mr. Franklin P. Mays, United States attorney, and the defendant by Mr. James K. Kelly, of counsel. On consideration whereof it is adjudged and decreed that said demurrer be and the same is hereby sustained, and that said bill of complaint be and the same is hereby dismissed.

DEADY, *J.*

Whereupon said complainant prays an appeal to the Supreme Court of the United States, which is allowed.

37 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 22nd day of September, 1890, at Portland, in Multnomah County, in said district, I duly served the within citation on appeal upon the therein named William Floyd by delivering to and leaving with A. L. Frazer personally at the office of defendant's attorney of record, James K. Kelly, in Portland, Oregon, a true copy of said citation on appeal duly certified to by me as U. S. marshal, said A. L. Frazer being at the time of such service in charge of and in said office, and said James K. Kelly being at said time absent from said office, but was a resident of Multnomah County.

L. T. BARIN,
United States Marshal.
By O. P. MILLER,
Deputy.

38 UNITED STATES OF AMERICA,
District of Oregon, ss:

To William Floyd, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon, in your favor, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest.
[SEAL.] R. H. LAMSON, *Clerk.*
By MAURICE MCKIM, *Deputy Clerk.*

(Indorsed:) No. 1638. U. S. circuit court, district of Oregon. The United States *vs.* William Floyd. Copy. Citation on appeal. Filed , 188 . , clerk. By , deputy clerk.

39 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon ss:

I hereby certify that on the 22d day of September, 1890, at Portland, in Multnomah County, in said district, I duly served the within citation on appeal upon the therein-named William Floyd, by delivering to and leaving with A. C. Frazer, personally, at the office of defendant's attorney of record, James K. Kelly, in Portland, Oregon, a true copy of said citation on appeal, duly certified to by me as U. S. marshal, said A. L. Frazer

being at the time of such service in charge of and in said office, and said James K. Kelly being at said time absent from said office, but was a resident of said Multnomah County.

L. T. BARIN,
United States Marshal.
By O. P. MILLER,
Deputy.

40 UNITED STATES OF AMERICA,
District of Oregon, ss:

To William Floyd, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest:
[SEAL.] R. H. LAMSON, *Clerk.*
By MAURICE MCKIM, *Deputy Clerk.*

(Indorsed:) No. 1638. U. S. circuit court, district of Oregon. The United States vs. William Floyd. Citation on appeal. Filed 188 . , clerk. By , deputy clerk. Serve Jas. K. Kelly.

41 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the writing hereto attached is a true and complete transcript of the record and proceedings in cause No. 1638 of the United States against William Floyd, as fully as the same appears of record and on file in my office and in my custody.

Witness my hand and the seal of the said court, affixed at Portland, in said district, September 25, 1890.

R. H.
[SEAL.] R. H. LAMSON, *Clerk.*
By MAURICE MCKIM, *Deputy Clerk.*

(Indorsement on cover:) No. 1448. The United States, appellant, vs. William Floyd. Oregon. C. C. U. S. Filed October 17, 1890. Supreme Court U. S., clerk's office. Received Oct. 17, 1890.

O

Office Supreme Court U. S.
FILED.
DEC 15 1890
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT, vs. THE DALLES MILITARY ROAD COMPANY *et al.* — No. 1216.

THE UNITED STATES, APPELLANT, vs. THE OREGON CENTRAL MILITARY ROAD COMPANY *et al.* — No. 1219.

THE UNITED STATES, APPELLANT, vs. THE WILLAMETTE VALLEY AND CASCADE Mountain Wagon Road Company *et al.* — No. 1248.

THE UNITED STATES, APPELLANT, vs. JAMES K. KELLEY. — No. 1444.

THE UNITED STATES, APPELLANT, vs. DANIEL J. COOPER, — No. 1445.

THE UNITED STATES, APPELLANT, vs. MATILDA C. ROGERS, ADMINISTRATRIX OF the estate of Alexander Rogers, deceased. — No. 1446.

THE UNITED STATES, APPELLANT, vs. WILLIAM GRANT. — No. 1447.

THE UNITED STATES, APPELLANT, vs. WILLIAM FLOYD. — No. 1448.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT, *vs.* THE DALLES MILITARY ROAD COMPANY *et al.*	No. 1218.
THE UNITED STATES, APPELLANT, *vs.* THE OREGON CENTRAL MILITARY ROAD COMPANY *et al.*	No. 1219.
THE UNITED STATES, APPELLANT, *vs.* THE WILLAMETTE VALLEY AND CASCADE MOUNTAIN WAGON ROAD COMPANY *et al.*	No. 1248.
THE UNITED STATES, APPELLANT, *vs.* JAMES K. KELLEY.	No. 1444.
THE UNITED STATES, APPELLANT, *vs.* DANIEL J. COOPER.	No. 1445.

THE UNITED STATES, APPELLANT, *vs.* MATILDA C. ROGERS, ADMINISTRATRIX of the estate of Alexander Rogers, deceased.	No. 1446.
THE UNITED STATES, APPELLANT, *vs.* WILLIAM GRANT.	No. 1447.
THE UNITED STATES, APPELLANT, *vs.* WILLIAM FLOYD.	No. 1448.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

MOTION TO ADVANCE.

And now, December 15, 1890, comes the Solicitor-General on behalf of the United States, and moves the court to advance the foregoing eight cases upon the docket of this court, to be set for as early a hearing as is convenient at the present term, and to be heard together.

These cases are bills in equity against corporations and persons holding evidences of title to something more than 2,000,000 acres of land in the State of Oregon. This large tract of land extends across the entire State of Oregon with a width of from 6 to 10 miles. The lands were granted by the United States to the State of Oregon to furnish means for the construction of roads in that State. The State of Oregon chartered corporations to perform

this service. Title under the acts of Congress passed to the State, or the assignees of the State, upon the condition of the completion of the roads.

Whether the condition was precedent or subsequent it is not now necessary to discuss. The cases were heard upon bills and pleas. The pleas were sustained. The court then refused to allow replies to be filed to the pleas, which was substantially a ruling that the bills were bad for want of equity, and should be dismissed without further pleading. The bills charged that the governor's certificates, upon which patents by the United States were issued, had been obtained by fraudulent representation of the officers of the corporations to whom they were issued, and that all the defendants took with a knowledge of that fact.

The ground upon which Judge Sawyer dismissed the bills was that of laches on the part of the United States and the ratification by subsequent act of Congress of the certificates of the governor. It is, of course, of great public interest to the people of the State of Oregon to have the question settled. Titles to these lands are now in doubt; sales of them and improvements upon them are held in abeyance. The cases present the same question, and can be argued at the same time.

There is appended a letter from Hon. James K. Kelley, of counsel for the appellees, and who speaks in the letter for all the counsel engaged in all the cases, in which the necessity for an early decision of the questions involved is forcibly stated.

WM. H. TAFT,
Solicitor-General.

APPENDIX.

WASHINGTON, *Nov. 28th*, 1890.

Hon. W. H. H. MILLER,
Attorney-General of the United States:

SIR: As attorney for the appellees is the case of the *United States, appellant*, vs. *The Dalles Military Road Company et al.*, I respectfully suggest some reasons why it would be advisable to make application to the Supreme Court to have the Oregon Wagon Road cases advanced on the docket for an early hearing.

These cases are, *The United States* vs. *The Dalles Military Road Company et al.*, No. 1218.

The United States vs. *The Oregon Central Military Road Company et al.*, No. 1219.

The United States vs. *The Willamette Valley and Cascade Mountain Wagon Road Company et al.*, No. 1248.

These suits were brought by the United States to declare forfeited to the Government certain lands granted to these several companies. The number of acres which it is sought to forfeit, as specified in the several bills of complaint, is as follows:

In the suit against the Dalles Military Road Co. 558,529$\frac{77}{100}$ acres patented and 126,919 acres unpatented.

In the suit against the Oregon Central Military Road Co. 402,240$\frac{67}{100}$ acres patented and 317,760 acres unpatented.

In the suit against the Willamette Valley and Cascade Mountain Wagon Road Co. 327,730$\frac{47}{100}$ acres patented and 548,750 acres unpatented, making in the aggregate 2,281,927 acres of land which it is sought to have declared forfeited to the United States in these three suits.

This large quantity of land has been practically withdrawn from sale since the passage of the act of March 2d, 1889, authorizing these suits to be brought, and they will remain unsalable until these suits shall be finally determined by the Supreme Court. No one will purchase any portion of them with the cloud now hanging over them. Nor can titles be procured from the United States under the preëmption or homestead laws for these lands until it shall be declared that they belong to the Government by the final decree of the Supreme Court. If, therefore, these cases should remain on the docket of the Supreme Court for four or five years before they would come on for hearing, it will readily be perceived that it would work a serious injury to the State of Oregon in retarding the settlement of that part of the State through which these roads were constructed. Beside this great loss to the State it would be ruinous to the vendees of the wagon road companies, who purchased these lands from them in good faith, believing that the titles to them were perfect.

There is another reason why an early hearing should be had. These cases were decided by the circuit court upon pleas filed to the bills of complaint, and the only question now before the Supreme Court is the sufficiency of these pleas. If it should be held that they are insufficient in law, the suits will go back to the circuit court to be tried upon the bills, answers, and replications. This will involve the taking of a vast amount of testimony on part of the defendants to show that the wagon roads were constructed in accordance with the requirements of the acts of Congress making the grants to the several companies. After the lapse of more than twenty years from the time the work was done many of the witnesses cognizant of the facts are already dead, and in the course of four or five years from this time many others might not then be living. That would be a serious, possibly an irreparable, loss to the defendants to these suits.

It was perhaps these reasons which induced Congress

to add the following proviso to the first section of the act under which these suits were brought:

Provided, That in said circuit court said suit or suits shall be advanced to hearing in preference to all other civil cases on the dockets."

The necessity for the advancement is equally as great in the Supreme Court; indeed it is greater, as the ordinary length of time for the cases to be reached on the docket of the Supreme Court is so much longer than in the circuit court. The reasons for the advancement in the court below are essentially the same in the Supreme Court.

There are several subordinate cases besides the three above mentioned brought by the United States against persons who purchased lands from the original grantors. These could be advanced and heard at the same time. Indeed, all can be argued and disposed of at one hearing, as the points in controversy are essentially the same in all cases. They will all depend upon points of law and facts which appear upon the face of the pleadings. No greater time will be consumed in the arguments of them all than in an ordinary case before the Supreme Court.

I may add here that I am authorized to speak for the attorneys in the other two suits, so far as it concerns efforts to have their cases advanced on the docket. Shortly before I left Oregon, on the 14th inst., I had a conversation with Messrs. Dolph, Bellinger, Mallory, and Simon, attorneys for the Oregon Central Military Road Co., and with Messrs. Williams and Hood, the attorneys of the Willamette Valley and Cascade Mountain Wagon Road Co., concerning this matter. They requested me to urge upon the law department the propriety of applying to the Supreme Court for an early hearing of these cases.

Respectfully, etc.,

JAMES K. KELLY,
Att'y for the Eastern Oregon Land Co., and other Def'ts.

FILED.
MAR 3 1891
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT, *vs.* THE DALLES MILITARY ROAD COMPANY ET AL.	No. 1218.
THE UNITED STATES, APPELLANT, *vs.* THE OREGON CENTRAL MILITARY ROAD COMPANY ET AL.	No. 1219.
THE UNITED STATES, APPELLANT, *vs.* THE WILLAMETTE VALLEY AND CASCADE MOUNTAIN WAGON ROAD COMPANY ET AL.	No. 1248.
THE UNITED STATES, APPELLANT, *vs.* JAMES K. KELLY.	No. 1444.
THE UNITED STATES, APPELLANT, *vs.* DANIEL J. COOPER.	No. 1445.
THE UNITED STATES, APPELLANT, *vs.* MATILDA C. ROGERS, ADMINISTRATRIX OF THE ESTATE OF ALEXANDER ROGERS, DECEASED.	No. 1446.
THE UNITED STATES, APPELLANT, *vs.* WILLIAM GRANT.	No. 1447.
THE UNITED STATES, APPELLANT, *vs.* WILLIAM FLOYD.	No. 1448.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
vs.
THE DALLES MILITARY ROAD COMPANY *et al.* } No. 1218.

THE UNITED STATES, APPELLANT,
vs.
THE OREGON CENTRAL MILITARY ROAD COMPANY *et al.* } No. 1219.

THE UNITED STATES, APPELLANT,
vs.
THE WILLAMETTE VALLEY AND CASCADE MOUNTAIN WAGON ROAD COMPANY *et al.* } No. 1248.

THE UNITED STATES, APPELLANT,
vs.
JAMES K. KELLY. } No. 1444.

THE UNITED STATES, APPELLANT,
vs.
DANIEL J. COOPER. } No. 1445.

THE UNITED STATES, APPELLANT,
vs.
MATILDA C. ROGERS, ADMINISTRATRIX of the estate of Alexander Rogers, deceased. } No. 1446.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM GRANT. } No. 1447.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM FLOYD. } No. 1448.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The eight cases now presented, and above entitled, come before this court upon appeals from the circuit court of the United States for the district of Oregon.

Said several suits were brought by the Attorney-General in pursuance of the act of March 2, 1889 (25 Stat., 850), and were begun in August, 1889.

The cases are known as the Oregon Wagon Road Cases, and involve questions arising out of three land grants made by the United States to the State of Oregon to aid in the construction of three wagon roads in said State.

The first of these grants in the order of time was by "An act granting lands to the State of Oregon to aid in

the construction of a military road from Eugene City to the eastern boundary of said State," passed July 2, 1864 (13 Stat., 355).

The second grant was by "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State," passed July 5, 1866 (14 Stat., '89).

And the third of said grants was by "An act granting land to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867 (14 Stat., 409).

The questions presented arise upon the respective bills of complaint, exceptions, pleas, fortified by answers, and demurrers as appearing and upon the decisions of the court upon the several questions thus arising.

By an order of this court, heretofore duly made, these cases have been advanced upon the docket to their present position, and in pursuance of said order and of a stipulation made by counsel the eight cases are to be argued and submitted together, unless the court direct otherwise.

The law which directs the bringing of these suits refers to the statutory requirements as to the completion of the roads, and in the fourth subdivision of its preamble recites that:

> Whereas the legislature of the State of Oregon has memorialized Congress, and therein alleged that certain of said wagon roads, in whole or in part, were not so completed, and that to the extent of the lands coterminous with unconstructed portions the certifications thereof by the Department of the Interior were unauthorized and illegal, therefore, etc.

MEMORIALS OF THE STATE OF OREGON.

The statutes of the State of Oregon show the adoption of the following memorials:

February 14, 1885, the legislative assembly of the State of Oregon (laws of Oregon, 1885, p. 513), adopted the following:

[House joint memorial No. 11.]

To the honorable Senate and House of Representatives in Congress assembled:

Your memorialists, the legislative assembly of the State of Oregon, would respectfully show and petition that:

Whereas, it is alleged that the Willamette Valley and Cascade Mountain Wagon Road Company, and the Dalles Military Wagon Road Company, the Oregon Central Military Wagon Road Company, have never completed their roads as required by the act granting said lands to said companies by act of Congress;

Therefore, your memorialists pray that the remaining land not yet patented to said companies be withheld from said companies until after the next regular session of the legislature of the State of Oregon, in January, 1887, in order that said acts may be investigated by said body, and your memorialists, as in duty bound, will ever pray.

Adopted by the House February 14, 1885.

W. P. KEADY,
Speaker of the House.

Concurred in by the Senate February 14, 1885.

WM. WALDO,
President of the Senate.

February 17, 1887, the legislative assembly of the State of Oregon (laws of Oregon, 1887, p. 377), adopted the following:

[Senate joint memorial No. 9.]

To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

We, your memorialists, the legislative assembly of the State of Oregon, in legislature assembled, would most respectfully represent and show that by an act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany to the eastern boundary of said State," approved July 5, 1866, and an act amendatory thereto, there was over 800,000 acres of land granted to the State of Oregon for the purpose of building said road. That by an act of the legislative assembly of the State of Oregon, approved October 24, 1866, in consideration of the Willamette Valley and Cascade Mountain Wagon Road Company agreeing to build said road, all rights belonging thereunder were transferred to said company; and,

Whereas, many complaints were made that said company had not built said road, or in any manner complied with the conditions of said grant; and,

Wheaeas, at the general session of the legislative assembly of the State of Oregon for 1885 a commission was appointed by said body ordering said commission to report to the next session of said assembly its findings and evidence thereon; and,

Whereas said commissioners did at the special session of said legislative assembly in 1885 make their said report and recommended the passage of Senate joint memorial No. 6, and said memorial was passed by said assembly, but after the passage thereof

some person or persons, desiring to defeat the wishes of the people of the State of Oregon and the will and intention of said assembly, did feloniously and surreptitiously mutilate and strike out from said memorial said wagon road. Wherefore, your memorialists pray that suits be brought in the name of the United States to cancel, annul, any and all patents or grants of lands for the building of said road, as said grant is a fraud upon the United States, the State of Oregon, and the people thereof. And your memorialists would further ask that the cancellation of said patents or grants be without any reservations or exceptions whatever.

And your memorialists will ever pray.

Adopted by the senate February 16, 1887.

J. C. CARSON,
President of the Senate.

Concurred in by the house February 17, 1887.

J. T. GREGG,
Speaker of the House.

These suits, known as the Oregon Wagon Road cases, were brought by the Attorney-General of the United States under and in pursuance of the following law, passed March 2, 1889 (25 Stat., 850):

AN ACT providing in certain cases for the forfeiture of wagon road grants in the State of Oregon.

Whereas the United States have heretofore made various grants of public lands to aid in the construction of different wagon-roads in the State of Oregon, and upon the condition that such roads should be completed within prescribed times; and

Whereas said grants were transferred by said State to sundry corporations, who were authorized by the

State to construct such wagon-roads and to receive therefor the grants of lands thus made; and

Whereas the Department of the Interior certified portions of said lands to the State of Oregon upon the theory that said roads had been completed as required by the granting acts of Congress, and upon the certificate o. the governor of the State of Oregon as to such completion; and

Whereas the legislature of the State of Oregon has memorialized Congress and therein alleged that certain of said wagon-roads, in whole or in part, were not so completed, and that to the extent of the lands coterminous with unconstructed portions the certifications thereof by the Department of the Interior were unauthorized and illegal: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby made the duty of the Attorney-General, within six months after the passage of this act, to cause suit or suits to be brought, in the name of the United States, in the United States circuit court for the district of Oregon, against all persons, firms, and corporations claiming to own or to have an interest in the lands granted to the State of Oregon by the following enumerated acts of Congress, to wit:

"An act granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State," approved July second, eighteen hundred and sixty-four;

"An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State," approved July fifth, eighteen hundred and sixty-six;

"An act granting lands to the State of Oregon to aid in the construction of a military wagon-road from

Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February twenty-fifth, eighteen hundred and sixty-seven:

To determine the questions of the seasonable and proper completion of said roads in accordance with the terms of the granting acts, either in whole or in part, the legal effect of the several certificates of the governors of the State of Oregon of the completion of said roads, and the right of resumption of such granted lands by the United States, and to obtain judgments, which the court is hereby authorized to render, declaring forfeited to the United States all of such lands as are coterminous with the part or parts of either of said wagon-roads which were not constructed in accordance with requirements of the granting acts, and setting aside patents which have issued for any such lands, saving and preserving the rights of all bona fide purchasers of either of said grants or of any portion of said grants for a valuable consideration, if any such there be. Said suit or suits shall be tried and adjudicated in like manner and by the same principles and rules of jurisprudence as other suits in equity are therein tried, with right to writ of error or appeal by either or any party as in other cases; and if any person, firm, or corporation having or claiming an interest in any of said lands shall be made defendant in such suit or suits, and in the judgment of the said court be a necessary or proper party defendant, and shall not be an inhabitant of or found within the said district, and shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing said absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served upon such absent defendant or defendants in the manner provided by section eight of an act entitled "An act to determine the jurisdiction

of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March third, eighteen hundred and seventy-five: *Provided*, That in the said circuit court, said suit or suits shall be advanced to hearing in preference to all other civil cases on the dockets: *And provided further*, That no right of appeal shall exist after six months from the entering of a final decree in said circuit court.

SEC. 2. That the State of Oregon, and any person or corporation claiming any interest under or through the grants aforesaid in the lands to be affected by said suit or suits, and whether made a party thereto or not, may intervene therein by sworn petition to defend his interest therein, as against the United States, or against each other, and affecting the said question of forfeiture, and may, upon such petition for intervention, also put in issue and have adjudicated and determined any other question, whether of law or of fact, which may be in dispute between said intervener and the United States, and affecting the right or title to any part of the lands claimed to have been embraced within the grants of lands by the United States to or for either of said wagon-roads. Should the lands embraced within said grants or either of them or any portion thereof, be declared forfeited by the final determination of said suit or suits, the same shall be immediately restored to the public domain and become subject to disposal under the general land laws; and should the final determination of said suit or suits maintain the right of the aforesaid wagon-road grantees or their assigns to the lands embraced in said grants, the Secretary of the Interior shall forthwith adjust said grants in accordance with such determination, and shall cause patents to be issued for the lands inuring to said grantees under said wagon-road grants and which have been heretofore unpat-

ented: *Provided further*, That the lands actually settled upon or occupied and used as a homestead or for agricultural or grazing purposes, in cases in which such settler or occupant has acquired the title of the State of Oregon under the grants recited in the first section of this act to the same, not exceeding one section to any one settler or occupant, shall not be included in such suit, and such settler or occupant shall not be made a party thereto, anything in this act to the contrary notwithstanding.

Approved March 2, 1889.

LEGISLATION RELATING TO THE OREGON CENTRAL MILITARY ROAD COMPANY.

July 2, 1864, the following law was enacted (13 Stats., 355):

CHAP. CCXIII.—An act granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon-road from Eugene City, by way of Middle Fork of Willamette River, and the most feasible pass in Cascade range of mountains, near Diamond Peak, to the eastern boundary of the State, alternate sections of public lands, designated by odd numbers, for three sections in width on each side of said road: *Provided*, That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatever: *And provided further*, That any and all lands heretofore reserved to the United States by act of Congress, or other competent authority, be, and the

same are, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way is granted.

SEC. 2. *And be it further enacted*, That the said lands hereby granted to said State shall be disposed of by the legislature thereof for the purpose aforesaid, and for no other; and the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States.

SEC. 3. *And be it further enacted*, That said road shall be constructed with such width, graduation, and bridges as to permit of its regular use as a wagon-road, and in such other special manner as the State of Oregon may prescribe.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of only in the following manner; that is to say, that a quantity of land not exceeding thirty sections for said road may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, then another quantity of land hereby granted, not to exceed thirty sections, may be sold, and so from time to time until said road is completed; and if said road is not completed within five years no further sales shall be made, and the land remaining unsold shall revert to the United States.

Approved July 2, 1864.

The following is the enactment of the State of Oregon, passed October 24, 1864 (Laws of Oregon, 1864, p. 36):

An act donating certain lands to the Oregon Central Military Road Company.

Whereas the last session of the Congress of the

LEGISLATION RELATING TO THE WILLAMETTE VALLEY AND CASCADE MOUNTAIN ROAD.

The following is the act of Congress under which this grant of land was made to the State of Oregon:

CHAP. CLXXIV.—An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from Albany, Oregon, by way of Canyon City and the most feasible pass in Cascade range of mountains to the eastern boundary of the State, alternate sections of public lands, designated by odd numbers, three sections per mile, to be selected within six miles of said road: *Provided*, That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatever: *And provided further*, That any and all lands heretofore reserved to the United States by act of Congress or other competent authority be, and the same are, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way is granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the said lands hereby granted to said State shall he disposed of by the legislature thereof for the purpose aforesaid and for no other; and the said road shall be

and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States.

SEC. 3. And be it further enacted, That said road shall be constructed with such width, graduation, and bridges, as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

SEC. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of only in the following manner, that is to say: That when ten miles of said road shall be completed, a quantity of land, not exceeding thirty sections for said road, may be sold coterminous to said completed portion of said road; and when the governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, then another quantity of land hereby granted, not to exceed thirty sections, may be sold coterminous to said completed portion of said road, and so from time to time until said road is completed; and if said road is not completed within five years no further sales shall be made, and the land remaining unsold shall revert to the United States.

Approved July 5, 1866.

By an act passed July 15, 1870 (16 Stat., 363), the foregoing act is amended so as to strike out the words "by way of Canyon City" in the first section of said act, and insert instead thereof the words, "by way of Camp Harney."

AN ACT donating certain lands to the Willamette Valley and Cascade Mountain Wagon-Road Company.

Whereas the last session of the Congress of the United States passed a certain act donating land to the State of Oregon, which act is hereby set forth, to wit: "An act granting lands to the State of Oregon, to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State."

(Here follows the act of Congress.)

SECTION 1. Be it enacted by the legislative assembly of the State of Oregon, That there is hereby granted to the Willamette Valley and Cascade Mountain Wagon Road Company all lands, right of way, rights, privileges, and immunities, heretofore granted or pledged to this State by the act of Congress, in this act heretofore recited, for the purpose of aiding said company in constructing the road mentioned, and described in said act of Congress, upon the conditions and limitations therein prescribed.

SECTION 2. There is also granted and pledged to said company all moneys, lands, rights, privileges, and immunities which may be hereafter granted to this State, to aid in the construction of such road, for the purposes and upon the conditions and limitations mentioned in said act of Congress, or which may be mentioned in any further grants of money or lands to aid in constructing such road.

SECTION 3. Inasmuch as there is no law upon this subject at the present time, this act shall be in force from and after its passage.

Approved, October 24, 1866.

LEGISLATION RELATING TO THE DALLES MILITARY ROAD COMPANY.

February 25, 1867, the following law was enacted (14 Stat., 409):

CHAP. LXXVII.—An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from Dalles City, on the Columbia River, by way of Camp Watson, Cañon City, and Mormon or Humboldt Basin, to a point on Snake River opposite Fort Boise, in Idaho Territory, alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road: *Provided*, That the lands hereby granted shall be exclusively applied to the construction of said road and to no other purpose; and shall be disposed of only as the work progresses: *And provided further*, That any and all lands heretofore reserved to the United States, or otherwise appropriated by act of Congress or other competent authority, be, and the same are hereby, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way to the width of one hundred feet is granted: *And provided further*, That the grant hereby made shall not embrace any mineral lands of the United States.

SEC. 2. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by the legislature thereof for the purpose aforesaid, and

for no other; and the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charges upon the transportation of any property, troops, or mails of the United States.

SEC. 3. *And be it further enacted*, That said road shall be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

SEC. 4. *And be it further enacted*, That the State of Oregon is authorized to locate and use in the construction of said road an additional amount of public lands not previously reserved to the United States nor otherwise disposed of, and not exceeding ten miles in distance from it, equal to the amount reserved from the operation of this act in the first section of the same, to be selected in alternate odd sections as provided in section first of this act.

SEC. 5. *And be it further enacted*, That lands hereby granted to said State shall be disposed of only in the following manner, that is to say, when the governor of said State shall certify to the Secretary of the Interior that ten continuous miles of said road are completed then a quantity of the land hereby granted, not to exceed thirty sections, may be sold, and so on from time to time until said road shall be completed; and if said road is not completed within five years, no further sales shall be made, and the lands remaining unsold shall revert to the United States.

SEC. 6. *And be it further enacted*, That the United States surveyor-general for the district of Oregon shall cause said lands so granted to be surveyed at the earliest practicable period after said State shall have enacted the necessary legislation to carry this act into effect.

Approved, February 25, 1867.

The following is the enactment of the State of Oregon passed October 20, 1868 (Laws of Oregon, 1868, p. 3):

AN ACT donating certain lands to Dalles Military Road Company.

Whereas at the second session of the Thirty-ninth Congress that body passed an act entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February 25, 1867, as follows:

(Here appears the act of Congress referred to.)

Be it enacted by the legislative assembly of the State of Oregon:

SECTION 1. That there is hereby granted to Dalles Military Road Company, incorporated, as it appears by the articles of incorporation filed in the office of the Secretary of State on the 30th day of March, 1868, all lands, right of way, rights, privileges, and immunities heretofore granted or pledged to this State by the act of Congress in this act heretofore recited for the purpose of aiding said company in constructing the road mentioned and described in said act of Congress upon the conditions and limitations therein prescribed.

SEC. 2. There is hereby granted and pledged to said Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which may be hereafter granted to this State to aid in the construction of such road for the purposes and upon the conditions mentioned in said act of Congress, or which may be mentioned in any further grants of money or lands to aid in constructing said road.

SEC. 3. The said Dalles Military Road Company is hereby authorized to locate the lands mentioned in the fourth section of the above recited act subject to the approval of the governor.

Approved, October 20, 1868.

GENERAL ACT OF JUNE 18, 1874.

CHAP. 305.—AN ACT to authorize the issuance of patents for lands granted to the State of Oregon in certain cases.

Whereas certain lands have heretofore, by acts of Congress, been granted to the State of Oregon, to aid in the construction of certain military wagon roads in said State, and there exists no law providing for the issuing of formal patents for said lands: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind except to provide for issuing patents for lands to which the State is already entitled.

Approved June 18, 1874.

(The act of the State of Oregon of October 14, 1862.)

The bill of complaint of the plaintiff below sets forth in paragraph IV of the same in the suit against the Willamette Valley and Cascade Mountain Wagon Road Company *et al.* (No. 1248), and in paragraph III of the bills in the other suits, respectively, in general terms, certain provisions of an act passed by the State of Oregon in 1862.

The provisions of said act, so far as they may be here applicable, are as follows :

The State of Oregon by an act passed October 14, 1862, entitled "An act providing for private incorporations and the appropriation of private property therefor" (General Laws of Oregon, 1862, reported by code commission, p. 3) provides that three or more persons may incorporate themselves, for the purpose of engaging in any lawful enterprise, business, pursuit, or occupation under the act. (Sec. 1.)

Sub. 6 of section 4 indicates some of the purposes of incorporation contemplated, by requiring the articles to specify :

> If the corporation is formed for the purpose of navigating any stream or other water, or making or constructing any railroad, macadamized road, plank road, clay road, canal, or bridge, the termini of such navigation, road, canal, or the site of such bridge.

Among the powers enumerated in section 5 appear the following :

> To purchase, possess, and dispose of such real and personal property as may be necessary and convenient to carry into effect the object of the incorporation.

Sections 27 and 28 of said act read as follows:

SEC. 27. Any road, other than a railroad, constructed by a corporation formed under this act, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the center not less than sixteen feet wide, furnished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track.

SEC. 28. All streams or other waters upon the line of such roads shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other water; or if such streams or other water form the boundary between two counties, then the county court of either of said counties may authorize the corporation to place a ferry boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries, or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water under the general statute in relation to ferries.

SIX CASES UNDER THE GRANT OF FEBRUARY 25, 1867.

Six of the eight appeals under consideration, viz, Nos. 1218, 1444, 1445, 1446, 1447, and 1448 arise out of transactions under or claimed to be under the act granting lands to aid in the construction of a road from Dalles

City to Fort Boisé (14 Stat., 409), and the act of Oregon granting the same lands to The Dalles Military Road Company, passed October 20, 1868.

In consequence of the above-mentioned laws and of acts done or claimed to have been done thereunder, and of the act of June 18, 1874 (18 Stat., 80), the granted lands were patented to The Dalles Military Road Company, June 19, 1876 (Rec., pp. 10 to 19).

In No. 1218, in which The Dalles Military Road Company and the Eastern Oregon Land Company are defendants, joined with others, the rights and interests of said companies are especially involved and the title of the land company to the granted lands is placed in question.

In No. 1444 the defendant is a grantee of The Dalles Military Road Company; in the four other cases above specified the defendants are grantees, respectively, of the Eastern Oregon Land Company, which derives its title through mesne conveyances from The Dalles Military Road Company.

The disposition of the questions arising under said six cases (except as to some minor points which will be adverted to elsewhere), will depend upon the conclusions that shall be reached upon the questions presented most fully in the case of *The United States* v. *The Dalles Military Road Company* and *The Eastern Oregon Land Company et al.* (No. 1218); and it is therefore deemed proper to submit said six cases in connection, and mainly upon a discussion of No. 1218. Nos. 1219 and 1248 are entitled to a separate consideration upon some points.

THE BILLS OF COMPLAINT.

In case No. 1218, the suit against The Dalles Military Road Company, the Eastern Oregon Land Company, and others, the bill of complaint was filed August 29, 1889, and appears in the Record, pages 2 to 10.

Paragraph I of said bill sets forth and recites the material portions of the act of February 25, 1867.

Paragraph II sets forth the act of the State of Oregon, of October 20, 1868, making transfer to The Dalles Military Road Company.

Paragraph III alleges that the State of Oregon never at any time passed any laws whatsoever for the special purpose of carrying the act of Congress aforesaid into effect, but long before the passage and approval of said act of Congress, and October 14, 1862, said State passed an act entitled "An act providing for private incorporations and the appropriations of private property therefor" (which act, so far as it may be applicable, is hereinbefore set out in this brief), and said paragraph sets forth said act of Oregon so far as the same is material to the case, and alleges that it has remained, and still is, in force.

Paragraph IV states that The Dalles Military Road Company is a private corporation purporting to have been incorporated March 30, 1868, under the laws of Oregon. That the proposed business of said corporation was to locate and construct a clay road from Dalles City to Snake River, opposite Fort Boisé. That January 11, 1871, said corporation made and filed an additional article, adding the right to accept and receive any and all grants of land, and other things of value, from the United

States and the State of Oregon, and to sell, convey, purchase, and hold land and any other property which the directors of said company may deem necessary and convenient for the interests thereof; and to establish and keep a toll road on any part of the road belonging to said company. That said company is still in being.

Paragraph V alleges that January 1, 1869, and on divers other days between said day and June 23, 1869, the officers, stockholders, and agents of The Dalles Military Road Company, and other persons, acting in their interest and in that of said company, falsely and fraudulently represented to George L. Woods, then the governor of Oregon, that said road had been constructed as by law required; they, the said officers, stockholders, agents, and representatives, and other persons aforesaid, then and there well knowing that said representations were false, and that the said road had not been constructed in any respect according to law or at all; that they and each of them made the said false and fraudulent representation for the sole and only purpose of fraudulently procuring from the said George L. Woods, as governor of the State of Oregon, a certificate declaring that the said road had been constructed in accordance with the act of Congress of February 25, 1867, and the act of Oregon of October 20, 1868.

That said Woods, as governor, in consequence of the false and fraudulent represensations, so made, issued his certificate (as specifically set forth, pp. 5, 6).

Paragraph VI alleges that it was not and is not true that The Dalles Military Road Company had at any time whatsoever constructed, or caused to be constructed, a

road upon any line of route located or surveyed by said company, or by any other corporation, person or persons, anywhere within the limits of the grant of land provided for in the act of Congress aforesaid, or at all, and this, the said George L. Woods, governor aforesaid, then and there well knew, and that it was not and is not true that the said governor made a careful, or any, examination of any road constructed or owned by The Dalles Military Road Company.

Paragraph VII alleges that said certificate was procured by the said company by and through the false and fraudulent representations aforesaid in order to enable it falsely and fraudulently to obtain possession and control of the lands lying within the limits of the grant of land provided for in said act of Congress, and that the acceptance of said pretended road by the governor aforesaid was a fraud upon the United States of America.

Paragraph VIII states that said road never was built, graded, bridged, cleared, or constructed, either in whole or in part, so as to be a public highway, or so as to permit the transportation of any property, troops, or mails of the United States over the same, and was not and never has been maintained as a public highway by any person claiming an interest in the lands.

Said bill of complaint further sets forth that neither the lands nor the proceeds thereof have been applied to the construction of the road or any part thereof, or to the construction of bridges or establishment of ferries thereon.

That the lands granted were not and have not been disposed of by the State for the purposes expressed in said act of Congress.

Paragraph XI sets forth the act of June 18, 1874.

Paragraph XII sets forth that June 19, 1876, the President of the United States, being deceived, misled, and imposed upon by the false and fraudulent certificates, issued to the defendant, The Dalles Military Road Company, a patent for 126,910.23 acres of land included in the grants made or intended to be made by said acts of Congress; and states that a copy of said patent is annexed to said bill of complaint and made a part thereof, and is marked Exhibit A.

It is further shown by said bill of complaint that May 31, 1876, The Dalles Military Road Company made, executed, and delivered to Edward Martin a deed which was filed for record May 31, 1876, and a copy of which is attached to the bill of complaint and marked Exhibit B.

That May 21, 1882, Eleanor Martin as the guardian, etc., of the minor heirs of Edwin Martin, deceased, made, executed, and delivered to Peter Donahue and James Phelan a deed which was filed for record April 5, 1882, and a copy of which is attached to the bill of complaint, and marked Exhibit C.

That August 3, 1882, James Phelan and Alice, his wife, gave a deed of the land to Donahue, a copy of which is attached to the bill of complaint and marked Exhibit D.

That August 4, 1884, Peter Donahue and others made, executed, and delivered to the Eastern Oregon Land Company a deed which was filed for record October 15, 1884, and a copy of which is attached to the bill of complaint and marked Exhibit E.

And that each and every of said deeds conveyed lands in bulk, and purported to grant to the respective grantees

all the lands lying and being in the State of Oregon, granted or intended to be granted to the State of Oregon by the act of Congress of February 25, 1867, and granted or intended to be granted by the State of Oregon to The Dalles Military Road Company by the act of October 20, 1868; and that the substantive parts of both of said acts are recited in all the said deeds and expressly made parts of each thereof.

That the Eastern Oregon Land Company is a private corporation, purporting to have been incorporated under the laws of the State of California September 26, 1884, and that the proposed businsss of said corporation was, among other things, that of buying and selling lands in Oregon; that said corporation is still in being.

By paragraph XV it is alleged that the maps or plats referred to in the certificate showed the line of pretended road to be 357 miles, which would make the grant of lands covered by the initiatory act to aggregate 685,440 acres, of which 558,529.77 acres are not yet patented to said road company, which inequitably claims the right to have a patent issued therefor.

By paragraph XVI it is alleged that each and every of the defendants, at the time of the execution and delivery of the deeds aforesaid, had full knowledge that the road provided for by said act of Congress had not been constructed and maintained as required by said act, and by the laws of Oregon, so as to be in any sense whatsoever a public highway, or so that it could be used as a highway, or so that the United States could transport its property, troops, or mails over the same; and also had full knowledge that no grades had been established or constructed,

that no ferries had been established or maintained, no clearing done, no bridges built, no cuts or turnouts made anywhere on the line of the road by The Dalles Military Road Company or any of the grantors or grantees of said deeds; and had full knowledge that said road was not begun nor completed within 5 years from the date of the passage of the act of Congress of February 25, 1867; and that each and every of said defendants well knew that the statement made in the certificate of the governor of Oregon herein above set forth were false; that the governor did not at any time whatsoever examine the road referred to in his said certificate, and that said certificate had been procured by false and fraudulent representations as aforesaid, and that the patent aforesaid was found to be issued upon said false and fraudulently procured certificate.

The prayer of said bill of complaint is, that all lands granted to the State by the act of February 25, 1867, be decreed forfeit to the United States and restored to the public domain; and that the patents, and certificates, and deeds described in the bill of complaint be declared fraudulent and void.

And that the United States have such other and further relief as to equity seemeth meet.

The several exhibits, A, B, C, D, and E, are attached to the bill of complaint and appear. (Record, pp. 10 to 30.)

In the case of *The United States* v. *James K. Kelly* (No. 1444), the bill of complaint is the same as the one above condensed, except that defendant Kelly is the grantee of The Dalles Military Road Company in two deeds, dated respectively December 3, 1870, and July 26, 1872, which

deeds are for an aggregate of 1,760 acres of land, and appear as exhibits attached to the bill of complaint.

It is alleged that the defendant entered into possession of said lands under said deeds, and that he claims to own and hold said lands adversely to the United States; and also that he had full knowledge and so forth, as is charged against the several defendants in case No. 1218.

In cases Nos. 1445, 1446, 1447, and 1448, the defendants below were grantees, respectively, of the Eastern Oregon Land Company.

The deed to defendant, Daniel J. Cooper, bears date September 27, 1886, and is for 800 acres of land.

The deed to defendant, Matilda C. Rogers, admistratrix, etc., bears date July 8, 1889, and is for 2,881.98 acres of land.

The deed to defendant, William Grant, bears date December 11, 1884, and is for 320 acres of land.

The deed to defendant, William Floyd, bears date January 4, 1887, and is for 1,440 acres of land.

And in each of these four suits the respective bills of complaint are in substance and effect the same as those set forth in the two preceding cases.

Case No. 1219, *The United States* v. *The Oregon Central Military Road Company, The California and Oregon Land Company, and others*, rests upon the claim of the appellant to lands claimed on the part of the defendants below under the act of Congress of July 2, 1864.

The bill of complaint, in Paragraph I, recites the substance of said act, and in Paragraph II sets forth the act of the State of Oregon, passed October 24, 1864, granting

to Oregon Central Military Road Company the lands, benefits, privileges, and immunities granted to the State by the aforesaid act of Congress.

The line of road claimed in this case is 420 miles, the total amount of land claimed is 720,000 acres, of which the amount of 317,759.33 acres remains unpatented.

It is alleged that the Oregon Central Military Road Company is a private corporation of the State of Oregon; that the California and Oregon Land Company is a private corporation purporting to have been incorporated under the general laws of the State of California, January 9, 1877, and that the lands listed and those patented to the former company were, after several mesne conveyances, and on March 3, 1877, deeded to the latter company, being the amount of 402,240.67 acres. The grounds of the action, the charges of false representation and fraudulent acts and of the knowledge of defendants are similar in this case to those set forth in the bill of complaint in case No. 1218, with the necessary and (for the purposes of this investigation) immaterial changes of name, circumstance, and locality.

The court below in its opinion (Rec., p. 67) notes the differences between the case of 1218 and that of 1219, as follows:

> This case, in nearly all respects, is similar to that just decided, *United States* v. *The Dalles Military Wagon Road Company*. The principal difference between the cases consists in the fact that in this case the certificates of the governor of completion are made on the completion of each section of 50 miles, and the act authorized the sale of 30 sections of the land before any work was done, and of 30 more upon the

certificate of the governor of the completion of each 10 miles of the road till the whole should be completed.

In case No. 1248 the suit is brought to recover the land claimed by defendants under the act of Congress of July 5, 1866, through the act of the State of Oregon passed October 4, 1866.

It is alleged that the line of the pretended road is set forth by the maps and plats to be 456½ miles long, which would make the grant of land aggregate 876,480 acres, of which 327,730.47 acres are not yet patented, and are inequitably claimed by the company.

So far as the questions presented by these appeals are concerned the bill of complaint is in substance and effect the same in its statements, allegations, charges, and prayer for relief as that filed in case No. 1218.

The following schedule refers to the several transcripts of record of the eight cases, designating the pages, respectively, of the more important matters therein set forth:

Reference to pages of the respective records as to pleadings and other matters in the several cases.

	Number of case.							
	1218.	1219.	1248.	1444.	1445.	1446.	1447.	1448.
Bill of complaint	2	2	2	1	1	1	1	1
Exceptions to bill	45	54	132	10	....	23	....	....
Petition as to pleas	46	54	43, 133	....	....	....	....	....
Order (pleas and exceptions)	48	55	44, 134	11	....	24	....	....
Pleas	56	56	47, 134, 144	....	....	....	....	....
Answers, supporting	60	60	54	....	....	....	....	....
Answers	47, 55, 66	....	....	....	....	....	....	....
Demurrer to bill	....	....	....	12	23	24	24	23
Decree	74	67	229, 241	13	24	25	25	24
Opinion	49, 74	67	229	....	....	....	....	....

EXCEPTIONS TO THE BILLS OF COMPLAINT.

The several exceptions filed to the respective bills of complaint are sustained upon the ground of impertinence.

The first exception relates to so much of the bill as sets forth the act of the State of Oregon passed October 14, 1862. (Rec. 1218, p. 4, Par. III.)

The second exception in all of the five cases where exceptions are filed, except No. 1248, and the third exception in that case, relates to so much of the bill as alleges that the road—

> Was not and never has been maintained as a public high way by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits provided for by the said act of Congress. (Rec. in 1218, p. 6, Par. VIII.)

The third exception in all of the said five cases, except No. 1248, and the fourth exception in that case, relates to the allegations of non-maintenance of the roads referred to in the respective bills and the non-maintenance of the several parts, portions, or constructions thereof. (See Rec. 1218, pp. 9, 45, and 48.)

The second exception in case No. 1248 relates to Paragraph VI, page 5, of the record in that case.

THE DEMURRERS.

The demurrers in the five cases in which they are interposed are general, alleging the insufficiency of the bill of complaint, except in case No. 1446, in which case an ad-

ditional cause is stated, to wit, that the heirs of Alexander Rogers, deceased, are by complainants' own showing proper and necessary parties to the suit.

THE PLEAS.

The petitions for leave to file more than one plea in cases Nos. 1218, 1219, and 1248 are the same in effect and the defendants in those cases are permitted to plead (1) bona fide purchase; (2) delays, laches, and estoppel; (3) effect of governor's certificate. (Rec. 1218, pp. 47, 48.)

In No. 1218 the joint and several plea of P. V. B. Henarie, Eleanor Martin, P. J. Martin, and the Eastern Oregon Land Company is filed, whereby it is alleged:

First, that George L. Woods, governor of Oregon, without false or fraudulent representations, and without fraud on his part, made his certificate in accordance with the requirements of the act of February 25, 1867.

That May 31, 1876, The Dalles Military Road Company, for $125,000 to it paid by Edward Martin, sold and conveyed all the said lands to him.

That by sundry mesne conveyances the title to said lands became vested in the Eastern Oregon Land Company.

Second. That June 23, 1869, the governor of Oregon certified as before stated.

That December 18, 1869, the Commissioner of the General Land Office withdrew from sale the odd-numbered sections within 3 miles from each side of said road in favor of the Dalles Military Road Company.

That Congress by act of June 18, 1874, provided that where lands had been granted to the State to aid in the con-

struction of certain roads; and the certificate of the governor should show that any such road had been constructed and completed as required, patents should be issued.

That Edward Martin, placing confidence in the governor's certificate and in the aforesaid order of the Commissioner, and believing that said act of Congress would be carried into effect by issuance of patents, did, May 31, 1876, purchase in good faith, for $125,000, then paid, all lands embraced in the grant to it and not sold by said company.

That said Martin had no previous notice of any failure to construct and complete the road according to the requirements, but was informed and believed that said road had been so constructed.

That thereupon said Martin became a bona fide purchaser for a valuable consideration of the land.

That others purchased said lands from said Martin, and from his heirs, under like circumstances, and that the title to all of the lands, not theretofore sold and conveyed, is now in the Eastern Oregon Land Company.

And said defendants, fortifying said pleas, made answer, admitting portions of the bill of complaint, and denying upon information and belief all false and fraudulent representations alleged, and denying fraudulent acts in the premises, and alleging the construction and completion of the road, as required, and asserting that the length thereof from Dalles City to Fort Boise was 330½ miles.

That large amounts of money had been expended in the construction of said road, and that the lands granted had been applied to the reimbursement of the moneys so expended.

That lands to the amount of 126,910.23 acres were patented, but said defendants deny that the President or any officer of the Government was misled or deceived by any false or fraudulent certificates.

And said defendants deny all unlawful combination and confederacy with which they are charged in the bill, all of which matters appear in detail in the record (pp. 60 to 64).

The answer of The Dalles Military Road Company, and of James K. Kelley, president, and C. N. Thornbury, secretary, denies upon information and belief the false and fraudulent representations charged, and denies that the governor's certificate was procured upon any false or fraudulent representations by the officers, stockholders, or agents of the company, or by any person or persons in its interest.

It alleges the construction and completion of the road according to the requirements of the act of Congress.

It describes the manner in which it alleges that the road was in part constructed by The Dalles and Boise Road Company; alleges that this company became embarrassed financially in 1866 and was reorganized; that articles of incorporation were filed in March, 1868, incorporating The Dalles Military Road Company, which succeeded The Dalles and Boise Road Company, and proceeded to construct the road in question.

That in March, 1869, The Dalles Military Road Company had a continuous road from Dalles City to Fort Boise, over which teams of eight or ten horses or mules, or five yoke of oxen could and did pass the entire length, hauling as much as 5 tons of freight at a load.

And these defendants deny that when the governor signed the certificate he knew that it was not true.

And they assert that the governor, from partial examination and from proof, knew that said road had been completed as required.

Said defendants describe the alleged manner of the completing and of the using of said road, and deny all and all manner of combination and confederacy with which they are charged, all of which matters appear in detail in the record (pp. 66 to 73).

In No. 1219 the California and Oregon Land Company file the plea of said company to the bill filed in that case, whereby it alleges the transfer by the State of Oregon to the Oregon Central Military Road Company of all land, etc., granted to said State by act of Congress of July 2, 1864.

That the governor issued several certificates as portions of the road in question which were completed.

That each of said certificates was made honestly and in good faith and without any fraudulent intent or procurement or false representation.

That said grant of lands and all rights and interests thereunder were, by sundry mesne conveyances, conveyed to and vested in this defendant.

Second. For a second plea said defendant alleges the transfer by the State of Oregon, and the certifying of the governor and the listing by the Commissioner of the General Land Office and the Secretary of the Interior, of 361,327.43 acres of land of the aforesaid grant.

That May 15, 1874, certain of the defendants named, placing confidence in said certificates of the governor and

also in said certified lists, purchased for $200,000 from other defendants named all of said granted lands, and paid said sum therefor, and that such purchase and payment were in good faith.

That the company now holding said lands received the same without any notice or any reason to suspect that there had been any fraud or misrepresentation or failure of duty in the examination or certifying aforesaid.

That the promoters of said land company have paid in the care and expense attending said land the sum of $87,775.10, and in taxes levied under the laws of Oregon the sum of $39,362.12.

That portions of the stock of said land company have been sold from time to time to others than original stockholders, such purchasers buying in reliance upon the acts aforesaid, all of which matters appear in the record (pp. 56 to 59).

And in support of said pleas the California and Oregon Land Company files its answer admitting the making of the governor's certificates, and denying, upon information and belief, that the same were procured by fraud or false representations, or that any false or fraudulent representations were made on behalf of the company to obtain the same.

And denies the fraudulent use and application of the county road, as set forth in paragraph 6 of the bill of complaint, and alleges that the road authorized was made and constructed in accordance with the requirements of the act of Congress and as certified in and by the several certificates of the governor.

Said answer also alleges that the said road was constructed throughout the whole length thereof, that large sums of money were expended in said construction, and that the same was constructed so as to be a public highway and so as to permit its regular use as a wagon road and so as to permit the transportation of property, troops, and mails of the United States over the same.

That the granted lands were disposed of to reimburse the company for the expenditure made by it in the construction of the road.

Said defendant denies that the Commissioner of the General Land Office, or the Secretary of the Interior, or the President was deceived or misled or imposed upon by any false or fraudulent certificates or otherwise.

Said defendant denies having had any knowledge that the road had not been constructed as required, or that any of the statements made in any of said certificates were false, or that either of said governors did not examine the road, or that either of said certificates were procured by false or fraudulent representations, or that either of said patents were procured upon any false certificates.

Said defendant alleges the purchase of the lands for $200,000 (as in the plea set forth), and the expenditure of the sums of money in care and expense and in the payment of taxes (as in said plea set forth), and alleges that present stockholders have purchased portions of the stock from original holders, relying upon the acts before set forth, and defendant denies all unlawful combination or confederacy charged by the bill; all of which matters appear in detail in said answer in the record (pp. 60 to 66).

In case No. 1248 the plea to the bill of complaint filed by Alexander Weill and David Cahn, with accompanying answer and exhibits, covers over 80 pages of the record.

Said plea admits the receiving of title as set forth in the bill, and says that in 1878 complaint was made to the Land Department of the Department of the Interior that the Willamette Valley and Cascade Mountain Wagon Road Company, referred to in the bill, had not been constructed as required by the act of Congress of July 5, 1866, and that no road had been constructed for a distance of about 300 miles, to wit, from a point 125 miles east of Albany, Oregon, easterly to the boundary line of the State.

That thereupon a special agent was appointed to examine the line of said road and report.

That said agent examined said road and took testimony thereon by affidavits, and about October 30, 1880, made his report, which report in effect concluded that no bridges had been built upon the road, and that from Cache Creek eastward to the boundary line of the State (about 350 miles) the terms of the grant had not been complied with and no road worthy of the name had been constructed.

That said report and evidence was laid before Congress, and that the House Committee on Military Affairs, after considering them and the evidence in contradiction of the same, reported recommending that no action be had by Congress in the premises, the report being annexed as Exhibit A, as a part of said plea.

That, February 8, 1882, the President laid before Congress other charges and alleged proofs that said road had

not been constructed, and the matter was referred to the House Committee on Public Lands and to the Senate Committee on Military Affairs, and that each committee reported recommending that no action be taken by Congress; which reports are annexed to said plea and marked, respectively, B and C, as parts of said plea.

That by the proceedings thus had the whole subject matter was referred to the Secretary of the Interior, who, upon investigation on July 5, 1882, decided that the evidence showed that the road had been completed and the land grant earned, and directed the certification of the lands for patent under act of June 18, 1874, said decision being annexed and marked D, as a part of said plea.

That thereafter, and about October 30, 1882, the executive officers of the United States issued to said road company the patent referred to in the bill, conveying 440,856.52 acres.

That these defendants, relying upon the investigations, conclusions, and acts aforesaid, did thereafter, and prior to the act of August 29, 1889, so alter and change their position in reference to said lands as would render it inequitable and unconscionable for complainant to assert a right (if possessed) to reclaim the lands granted by it.

Said defendants then allege large expenditures in the selection, certification, and securing patents of the lands patented, and in the selection of other lands, and in examining and platting lands, and in taxes, and in defending and protecting said lands; and that they have sold some portions of said lands; and that they have paid out a large sum in rebuilding and improving said road; and

allege that they have made the road as good a wagon road as the character of the country admits or requires, more than fully complying with terms of the granting act of July 5, 1866.

And also that they have expended large sums of money as interest.

And for a further plea said defendants further plead that in 1871 the attention of defendant Weill was called to the existence of the road company and its ownership of the land grant, and it was represented to Weill that the road had been fully constructed, and the grant earned, and that the company held title to the lands, and that they were for sale.

The said Weill joined with one Clarke and one Hogg to purchase said lands, which purchase was made, and said lands were deeded by the road company to Clarke August 19, 1871; and September 1, 1871, said Clarke conveyed said lands to defendant, David Cahn, to hold in trust for Weill, Clarke, and Hogg, according to their respective interests.

That the greater part of said lands were then unsurveyed, a few sections had been selected, none had then been patented by the United States to the road company or to the State of Oregon, and in order for additional protection said Weill and Clarke purchased the stock of said road company.

That at the time of the first conveyance by said road company said Weill had paid in and for the purchase of said lands the sum of $140,636.39, and said Clarke the sum of $20,092.50; and that at that time the certificates of the governors of Oregon certifying to the construction

and completion of the several parts of the road had been made and duly filed in the office of the secretary of state of the State of Oregon and in the Department at Washington, and that these defendants relied upon said certificates.

That in the year 1879 defendant Weill purchased the interests of Clarke and Hogg in said lands for $21,400, all of them believing that said road had been completed, as required by act of Congress and as certified.

These defendants deny all manner of fraud or knowledge or notice of any fraud whatsoever, or of any claim on the part of the complainant at the time of acquiring title to these lands, or to any portion thereof, and they aver that they are purchasers in good faith, without notice and for a valuable consideration.

And for answer to accompany said pleas these defendants allege that they had no knowledge or notice of the non-construction of the road as required; or that the statements made in the certificates of the governors or any of them were false, and generally assert the good faith of each defendant, and that neither had any knowledge or suspicion of any false representation or fraud in the premises; and allege that but for the existence of said certificates said Weill would not have purchased the lands.

Said pleas and answer and the reports of the Government's special agent and the reports of the committee of Congress and the letter of the Secretary of the Interior appear in detail in the Record (pp. 47 to 131).

The answer of the Farmers' Loan and Trust Company, defendant, appears (pp. 134 to 143), and is in the nature of a plea in bar and sets forth the principal matters ap-

pearing in the plea and answer last referred to, except it is shortened as to details and the exhibits are omitted.

But this answer has this additional element, to wit, it alleges (p. 139) that this defendant is the trustee for certain bondholders of bonds secured by a mortgage made to this defendant as trustee, and described in the answer.

Defendant claims that its position as trustee was accepted by reason of relying upon the investigations and examinations made by the Senate and House of Representatives, and the decision of the Secretary of the Interior, and the acts of the executive officers (which are set forth in the foregoing plea and answer). This defendant alleges that Weill, on or before February 18, 1879, was the holder of the lands in question; that on said day Weill and Hogg agreed in writing that Hogg should have full and irrevocable power for two years from January 1, 1879, to sell all the lands, stocks, and franchises of The Willamette Valley and Cascade Mountain Wagon Road Company, and the stock of the Deschutes Bridge Company, and the grant of the lands now in controversy, amounting to about 850,000 acres.

And this defendant alleges that said Hogg, under said authority, sold for said Weill, to the Willamette Valley and Coast Railroad Company, all of said lands except 10,000 acres; and also alleges that said Weill, acting through his attorney in fact, said Hogg, executed and delivered to said Willamette Valley and Coast Railroad Company a deed which recited the deed from Weill to Hogg, of February 18, 1879, and agreed that upon compliance by the said Willamette Valley and Coast Railroad Company with

the terms and conditions of the said agreement, he, the said Weill, would convey and deliver to the railroad company the property mentioned in said deed.

Defendant further says that January 1, 1881, and within the two years the said railroad company, having full power so to do, duly tendered and offered to Weill the sum of $445,000 as the purchase price of said grant of lands and complied, on its part, with the terms and conditions of said agreement and demanded a conveyance from Weill of the land and property described in the deed of February 18, 1879, but that said Weill did refuse and ever since has refused to execute his said deed of said land grant and other property.

This defendant claims that by reason of this tender and demand the Willamette Valley and Coast Railroad Company is, in equity, the owner of the lands now in controversy, subject to the payment by said company of the money tendered, and alleges that said railroad company is ready and willing at any time to make payment upon receiving deeds of conveyance.

Defendant further alleges that October 1, 1880, a mortgage was made by the Oregon Pacific Railroad Company to this defendant, party of the second part, and that the Willamette Valley and Coast Railroad Company was the party to said mortgage. Said mortgage recited, among other things, in fact, that the Willamette Valley and Coast Railroad Company had acquired the right to certain property, including the grant of lands to the Willamette Valley and Cascade Mountain Wagon Road Company, being the land grant which is the subject-matter of this

suit, and that the Oregon Pacific Railroad Company had become the owner of at least seven-eighths of the stock of the Willamette Valley and Coast Railroad Company.

That the said railroad companies for due consideration in and by said mortgage granted to this defendant, among other things, all their rights in the grant of lands known as the land grant of the Willamette Valley and Cascade Mountain Wagon Road Company; such conveyance being made to this defendant in trust to secure the issue of the bonds aforesaid.

Defendant further alleges that under this mortgage the Oregon Pacific Railroad Company issued bonds to the amount of about $15,000,000, and that such bonds have passed into the hands of various holders for value, and the defendant claims that the same are valid obligations against the lands of the land grant in question, subject only to the payment of the amount tendered.

This defendant further says that said land grant is and always has been considered of very large value, and a large and important part of the consideration, on the strength of which the bondholders advanced their money.

The pleas and answer of T. Egenton Hogg, Willamette Valley and Coast Railroad Company, and the Oregon Pacific Railroad Company, appear (Rec., pp. 144 to 153), with their exhibits, the same as set forth, commencing at p. 57 of the record, and continuing for over eighty pages thereafter, being again set forth and repeated.

The joint and several plea and the supporting answer, including the exhibits, set forth substantially the matters contained in the pleas and answer of Alexander Weill

and David Cahn, and the answer of the Farmers' Loan and Trust Company, hereinbefore set forth, and it is not deemed necessary to present the details of this joint and several plea and supporting answer, but leave is asked to refer to the same as set forth (pp. 144 to 228 of the record).

The three cases in which pleas were filed were heard upon the pleas, and in each case it was adjudged and decreed that the bill of complaint be dismissed.

In four of the five cases in which no plea is filed the record shows a stipulation that the defendant need not plead until the determination of the pleas in the suit of the United States against the Eastern Oregon Land Company, or until further order.

ASSIGNMENTS OF ERROR.

(1) It is submitted that in case No. 1218 the court erred in decreeing the dismissal of the bill of complaint.

(2) The court also erred in case No. 1219 and in case No. 1248 in adjudging and decreeing the dismissal of the bill of complaint.

(3) The court erred in case No. 1218 in sustaining the exception to the third paragraph of the bill of complaint, after the word "effect" in the third line of said paragraph.

(4) The court erred in sustaining like exceptions to the matter in cases Nos. 1219 and 1248, and erred in expunging from said several bills of complaint the allegations therein relating to the law of the State of Oregon passed October 14, 1862.

(5) The court erred in case No. 1218 in sustaining the second exception to the bill of complaint, the same being an exception to all of paragraph VIII after the word "same" therein, and also erred in sustaining a like exception to same matter in cases Nos. 1219 and 1248, respectively.

(6) The court erred in sustaining the third exception to the bill of complaint in case No. 1218 and in sustaining a like exception to similar matter in the other bills of complaint, and erred in holding such portions of the respective bills of complaint as implied or alleged the maintenance or nonmaintenance of the road to be impertinent in the bill, and erred in expunging from the several bills the allegations relative to the nonmaintenance of the respective roads, and to the knowledge of the several defendants in relation thereto.

(7) As to each of the three principal cases here presented the court erred in holding the claim of the complainant below to be a stale, and erred in holding the complainant estopped from prosecuting the same.

(8) And the court also erred in deciding and holding that any, either, or all of the several matters set forth in the respective pleas and the answers fortifying the same—as to the respective bills in the three cases, or either of them—authorized or established a legal right to the decree dismissing the bill to which such decree relates.

(9) The court erred in refusing to allow the complainant below to reply to the respective pleas, so as to try the truth of the allegations made.

ARGUMENT.

In the case standing first on the docket the grant ran to the Dalles Military Road Company, and the ownership of nearly all of the land is now claimed by the Eastern Oregon Land Company.

In the second case the grant ran to the Oregon Central Military Road Company, and the land is now claimed by the California and Oregon Land Company.

In the third case the grant ran to the Willamette Valley and Cascade Mountain Wagon Road Company, and the land is now claimed, first by Alexander Weill, and second by the owners of the Willamette Valley and Coast Railroad Company, subject to such equities as may exist in favor of Weill, and of the holders of $15,000,000 in bonds of the Oregon Pacific Railroad Company.

It is a question of fact, still undetermined, whether either wagon road contemplated by the National and State legislation has yet been constructed.

It seems manifest that if a trial of the question of fact is avoided the purpose of the act of March 2, 1889, will have been defeated.

I.

THE STATE ACT OF 1862.

It is respectfully submitted that the court erred in holding that none of the provisions of the act of Oregon, passed October 14, 1862, have any application to the roads authorized by Congress and now under consideration.

The said acts of Congress contained the following provision:

> That said road shall be constructed of such width, graduation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

The acts of the State of Oregon transferring the land-grants provide, in the case relating to the Dalles Military Road Company, and the same in substance in the other cases—

> That there is hereby granted to the Dalles Military Road Company, incorporated, * * * all lands, right of way, rights, privileges, and immunities heretofore granted or pledged to this State by the act of Congress in this act heretofore recited, and for the purpose of aiding said company in constructing the road mentioned and described in said act of Congress, upon the conditions and limitations therein prescribed.

It is claimed in behalf of the complainant that the Congressional act should be broadly and liberally construed. The State law of 1862 has remained in active force ever since its passage. After the passage of the national granting act the State law continued to be the law of Oregon as to the construction of highways. It is admitted that the Dalles Military Road Company was incorporated under the general laws of the State. It was incorporated with the view of constructing the land-grant road. Some special manner of construction prescribed by the State is plainly contemplated by the act of Congress.

It may be fairly inferred that the act of Congress was left indefinite because of the knowledge possessed that the State prescribed a special manner of construction.

It may also fairly be inferred that the State, in transferring the grant to the wagon-road company without special conditions, relied upon the statute of October 14, 1862, subject to which the company was incorporated, as providing valid and sufficient requirements for the construction of the highways.

Congress, in using the words "may prescribe," cannot be held to have excluded existing laws; it should be held, rather, that the legislation was in view of existing law, and that the real intent was that specifications as to the construction should be subject to the State, and that the construction should be in accordance with the laws of the State in force at the time the obligation to construct should become binding. Congress did not point to some future enactment, it pointed merely to the law of the State as it should actually exist; and the fact that such law continued, instead of being afterward created, does not exempt the road company from its requirements.

Although the National and State acts, when accepted by the road company, may be held to constitute a contract, this contract must—nothing appearing to the contrary—be held to be made subject to the provisions of existing law.

That over 2,000,000 acres of land should be granted, first by Congress and afterward by the State, with no requirements as to the public highway to be constructed in payment therefor except that the road should be "con-

structed with such width, graduation, and bridges as to permit of its use as a wagon road" would be strange indeed. But this was not done.

Congress, in addition to this, required that the roads should be constructed "in such special manner as the State of Oregon may prescribe."

When the land passed to Oregon it passed under the existing applicable law of October 14, 1862.

The act of Oregon granted to the road company the land upon conditions and limitations in the act of Congress prescribed; one of these conditions was that the road should be constructed "in such special manner as the State of Oregon may prescribe," and that special manner was prescribed by the existing statute.

When the creature of the State statute, the corporation, became charged with the duty of the building the road by the acts of the State, the statute of October 14, 1862, by force of its existence, prescribed the manner in which such road should be constructed. (*Schultz* v. *Military Road Company*, 7 Or., 264.)

II.

THE COMPANIES RECEIVING THE LAND GRANTS WERE BOUND TO MAINTAIN THE RESPECTIVE ROADS.

It is respectfully submitted that the court erred in holding that the several companies were under no obligation to maintain any road for any time whatever, and erred in holding that matter in the bills charging non-maintenance and the knowledge thereof on the part of the defendants was impertinent.

The same question is presented in case No. 1248, in the opinion, page 240.

The views of the court below upon this question are given in the opinion in case No. 1218, pp. 51 to 55. Each of the granting acts of Congress contained the following provision:

> And the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charges upon the transportation of any property, troops, or mails of the United States.

It is evident that Congress intended that each road should "be and remain a public highway."

It is not too much to say that such continuance was one of the conditions of the grant and that such condition was charged upon the grant by the State to the company, and became an element of the contract. It will be noticed also that the Congressional act requires the road to be constructed with "such width, gradation, and bridges as shall permit of its regular use as a wagon road."

It is difficult to say now the road company is bound to construct a road that shall "be and remain a public highway," and of a nature to permit its "regular use" as a wagon road unless it was intended that the company receiving the land grant should maintain the road. This legislation was in view of statutes of Oregon which allow tolls to be taken, and all parties contemplated that the constructing company and its successors should control the road and maintain it, subject to its free use by the Government. The words of the statute, "regular use," are

disregarded in a construction which practically holds that if the width, gradation, and bridges for a wagon road are established for a day, the law is satisfied.

The purpose of the United States in providing a public highway that should "be and remain" for its "regular use" is not complied with by the making of a road that might immediately be allowed to become impassable.

In the case of *Schultz* v. *Military Road Company* (7 Oregon Rep., 259, 263, 264), the court, Boise, J., says:

> The second error assigned is that the court erred in instructing the jury that, "under the acts of the legislature and under the act of Congress, the defendant was and is obliged to keep the road in such condition as that the mails, among other things, may be safely, securely, and expeditiously transported over it."
>
> An act of Congress approved February 25, 1867, granted to the State of Oregon certain lands to aid in the construction of a military wagon road from Dalles City, on the Columbia River, by way of Camp Watson, Canyon City, and Mormon or Humboldt Basin, to a point on Snake River opposite Fort Boisé, in Idaho Territory. It also provided that the land so granted should be applied exclusively to the construction of said road. Section second of said act provided that the State legislature should dispose of these lands for the purpose of building said road, and for no other purpose; and that said road shall remain a public highway for the use of the Government of the United States, free from tolls or other charges upon the transportation of any property, troops, or mails of the United States. Section 3 provides that said road shall be constructed with such width, gra-

dation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

The State of Oregon, by an act approved October 20, 1868, granted these lands to the appellant for the purpose of aiding said company (the appellant) in constructing the road mentioned and described in said act of Congress, upon the conditions and limitations therein prescribed. When the appellant accepted the grant, it undertook to construct and maintain said road in such condition as to enable the mails to be transferred over it with safety and convenience to the mail carrier. The act of the State legislature did not particularly prescribe the manner of constructing the road, but we think that the appellant, when it was organized as a corporation to construct a road in Oregon, undertook to construct it in the manner then prescribed by the laws of the State for the construction of such roads. While the road remained under the control of appellant it was obliged to maintain the the same, and we think this instruction was not erroneous.

III.

THE POSITION OF THE DEFENDANTS.

The act of 1889 directs these suits to determine:

(1) The questions of the seasonable and proper completion of said roads in accordance with the terms of the granting acts, either in whole or in part;

(2) The legal effect of the several certificates of the governors of the State of Oregon of the completion of said roads;

(3) The right of resumption of such granted lands by the United States;

And (4) To obtain judgments, which the court is authorized to render, declaring forfeited to the United States all of such lands as are coterminous with the part or parts of either of said wagon roads which were not constructed in accordance with the requirements of the granting acts.

And (5) to set aside patents which have been issued for any such lands, saving and preserving the rights of all bona fide purchasers for a valuable consideration, if any such there be. (Sec. 1, act of March 2, 1889.)

It is necessary to conclude that Congress intended a legal investigation which would bring the facts fully before the court, and did not intend the determination of the important interests involved upon the untested allegations of the defendants.

The position of the defendants is remarkable, staleness of claim, estoppel, laches, the governor's certificates, and bona fide purchase, are all of the grounds set forth by the defendants below to avoid an actual investigation.

Congress must be held to have considered and given full effect to the granting acts, and to the act of 1874, and to the reports that had been made by its own committees, and to the acts and proceedings of the Commissioner of the General Land Office, the Secretary of the Interior, and those of all other executive officers.

An assertion that the claim of the United States is a stale claim is an assertion that Congress deliberately directed suit upon a stale claim.

An allegation that the complainant is estopped by the reports of committees of its Congress and by the acts and

proceedings of its executive officers is an allegation that Congress directed suits to be initiated that would be barred by such an estoppel.

If laches on the part of the Government be a good defense on behalf of one who has obtained its property, then Congress directed suits which would be defeated by the previous delays of Congress.

As to the fraud charged against the governor's certificates in the bills of complaint, and as to the bona fides of the defendants, and as to the amounts which they have in good faith actually expended in connection with the roads or lands, we have no proofs except the allegations of the pleadings.

It can hardly be that final adjudication is to be made upon the extensive interests involved in this litigation on such assumptions and such proofs unless absolute necessity so demands.

IV.

THE DEFENDANTS ARE BOUND BY THE CONDITIONS OF THE GRANTING ACTS, AND ARE CHARGEABLE WITH NOTICE.

The grants of the several national granting acts are upon this explicit condition :

> *Provided*, That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses ; and the same shall be applied to no other purpose whatever.

The State acts grant what the State receives by the act of Congress "upon the conditions and limitations therein prescribed."

The deeds from the respective road companies do not profess or assume to convey any other title than that conferred upon the grantor by the act of Congress and that of the State legislature.

The deed from The Dalles Military Road Company to Edward Martin contains the following provision:

> It being the intention of the party of the first part to convey, and it does hereby convey, to the party of the second part the said lands and all of the rights, title, and interest acquired by said party of the first part under said acts or either of them in said lands or any part thereof, or any lands, being all the interest in and to the lands and premises hereinbefore described, together with any and all further interest that it may hereafter acquire or now possess by virtue of further compliance with all or any of said several acts referred to.

And the other conveyances from the grantees of the State have a like provision.

No covenant of warranty of title appears in any deed. Each conveys such title as the grantor had, and the title and rights in each case relate back to the grant of the granting acts.

The act of 1874, by its concluding paragraph, limits the scope of that enactment, saying—

> That this shall not be construed to revive the land grants already expired, nor to create any new rights of any kind except to provide for issuing patents for lands to which the State is already entitled.

Thus it appears that the land grants were to be exclusively applied to the constructing of the road, and their application to any other purpose was prohibited. The grant was only upon these conditions; the State acts continued, as they must have done, the conditions and limitations, and the act of 1874 has not waived or changed them, and all deeds were subject to these conditions and limitations.

It is submitted that any purchaser receiving such a title of land so granted was bound, at his peril, to know that the conditions had been fulfilled and that the limitations had not been overstepped. He was bound, of his peril, to know whether the constructing company had built the road as required. He was bound to ascertain, at his peril, whether the certificate of the governor was fraudulent or otherwise.

This point is well presented in the case of The Dalles Road Company. The granting act of the State was passed October 20, 1868. The length of the line of the road as admitted by the answers was 330½ miles. Eight months after the passage of the act, and June 23, 1869, the governor certifies that he has made "a careful examination of said road since its completion, and that the same is built in all respects as required by the said above recited acts, and that said road is accepted." (Record, p. 6).

Any person purchasing the half million acres of land involved was not at liberty to merely look at or have an attorney examine the governor's certificate, but it was his duty to ascertain whether the original acts had been complied with, whether the land had actually been earned, and whether the required road had in fact been built.

The withholding of the patents by the Government put defendants upon their inquiry.

A vendee is always chargeable with knowledge of all the facts concerning his title which any reasonably suggested inquiry, if made with prudent diligence, would have ascertained.

No one can for an instant contemplate the attitude of the vendee of this grant without supposing him to have examined the acts of Congress and of the legislature from which the title proceeded and to have inquired into the performance of those acts upon which alone it could rest.

In case No. 1248 the court says (p. 235) that before purchasing "Weill employed counsel learned in the law, who advised him that the title of the wagon road company to the same was perfect, and that he had a right to rely on the certificates of the governor as conclusive evidence that the conditions of the grant had been duly performed;" that in making the purchase he did so rely, and but for the certificates would not have made it; that the purchasers were then living in San Francisco and had never been in Oregon except Cahn, who was there a short time in June, 1867, and that neither of them had ever been there since.

It is respectfully submitted that these purchasers are not justified in now claiming the benefits of the land grant without showing that it has been earned, upon these or any similar grounds.

The existence of the public statutes was notice to them of the conditions, limitations, and prohibitions therein contained.

The principle applicable is approved in *Duncan* v. *Jandon* (15 Wall., 165).

V.

THE CLAIMS ARE NOT STALE CLAIMS.

It is submitted that the claim of the United States against a corporation or the successors of a corporation as to the application of a portion of the public lands under laws that have not been adjudicated upon is not a stale claim.

The moving suggestion of the suits comes from the legislature of the State crossed by these broad belts of wagon road land grants.

Congress, in 1889, directed the suits to be brought.

It is submitted that Congress passed upon the question of staleness and decided it against the defendants so far as this litigation goes.

(2) Portions of the land, amounting to something over a million acres, remain unpatented, and the defendants call for the issuance of the patents; the question thus lies between the Government and the defendants—whether the land they demand has been earned. As to this unpatented land, the claim is not a stale one.

(3) Under the charges of the bill of complaint that several (and nearly all) of the certificates of completion are false and fraudulent, and were so to the knowledge of those making them, and to the knowledge of the several defendants, the claims are not stale.

(4) In consequence of the fatal defects appearing in certificates in cases Nos. 1219 and 1248 (pointed out elsewhere) the claims should not, equitably, be treated as stale claims.

VI.

SEVERAL OF THE CERTIFICATES ARE FATALLY DEFECTIVE.

In case No. 1248 there is no pretense that the governor made any personal examination of the road whatever, or that he had any knowledge as to whether it was constructed or not.

The certificate of Samuel E. May, acting governor, (Rec. p. 6) certifies that the plat or map of the road had been filed in his office by the road company, and that it showed that the road, commencing and ending as designated, had been completed as required.

The certificate of George L. Woods, governor, states (p. 7) that the extension of "said road by my direction has been examined and accepted."

The certificates of L. F. Grover, governor (pp. 9, 10), employ the same words.

The first two certificates omit to certify any completion of the road; the last two have such a certificate, but the language used shows that the governor did not claim to have himself examined any portion of the road.

The answer of the Farmers' Loan and Trust Company (pp. 135, 136) alleges that in each case the governor issued the certificates, "having first, however, caused to be made

an examination," etc. Therefore it is apparent that in this case, and as to the 861,440 acres here in question, the first paper (Governor May's) certifies to *nothing except that the company's map shows that a portion of the road has been completed*, and the second paper (Governor Wood's) certifies to nothing except the filing of the map that shows the route, and that the road, by his "direction has been examined and accepted." This certificate is utterly barren of any certification that any portion of the line covered by this certificate has been "*completed*," and neither of these two certificates complies at all with the requirements of the original granting act or with the act of 1874.

The third paper (Governor Grover's) shows the filing of the map showing the route, and certifies that the portion of the road covered by this certificate has been completed; but, as before noted, it shows that the examination was not made by himself. The language excludes any implication that he had any knowledge that the road was completed.

The fourth paper is of the same scope and extent as the third. Neither paper shows that the governor exercised any official discretion under the law.

It is submitted with confidence that, as applied to case No. 1248, the governor's "certificates" furnish no grounds of defense.

It is true that a document appears in the record (p. 60), bearing date October 2, 1871, which refers to this land grant, and says that "said company, pursuant to the provisions of said grant, constructed said road from the city of Albany * * * to the eastern boundary of the State of Oregon, a distance of 448 miles."

But it is submitted that this paper, or proclamation, is not a certificate under the granting act or under the words of the act of 1874. It is not set up or mentioned in any plea, nor is it referred to in any answer. It only comes into the Record as portions of the proceedings of the committees of Congress. There is no reference in the whole Record to this document except its accidental appearance among the committee papers. This paper does not use the statutory word "completed." It states that "lands along the line of the road to the extent of 860,000 acres *have*, under said donation and grant, *passed to and become the absolute property* of said Willamette Valley Road Company, and are subject to said company's disposal."

This clause, while it indicates the probable object of the document, is no proper part of a certificate of completion under the statute, and the whole paper appears to be, not in pursuance of the granting statutes, but a proclamation of the governor which could nowise affect the United States, and which placed no obligation upon the State of Oregon.

The statement that the lands *have passed* and become the property, etc., shows that the former certificates are relied upon and that there is no intent that this paper should be considered a certificate.

In case No. 1219 the certificate of Governor Woods, (Rec., p. 6) certifies that—

> This plat or map * * * has been duly filed * * * and shows that portion of the road commencing at Eugene City, Oregon, and ending at the eastern boundary of the State, which has been completed as required by the act of Congress, etc.

This is no certificate of completion under the statute. It is the only certificate existing as to 238 miles of the road; that is to say, as to all of the 330½ miles of road excepting the 92½ miles covered by the two prior certificates.

The statement is that the plat or map filed shows that portion of the road which has been completed as required by the act of Congress.

This certificate is no allegation of completion, it relates only to the map, and to what the map shows. This is no certificate to the Secretary of the Interior under the act of July 2, 1864, nor is it a certificate showing the road "to have been constructed and completed" as required by the act of 1874.

Considered as an alleged certificate, this paper is either plainly and fatally defective or it is a palpable evasion; in either case it is not a certificate under the law.

Any purchaser assuming to stand upon it is without support.

As a bar to this judicial investigation commanded by the people through Congress it is not entitled to respectful attention.

VII.

STALE CLAIM, LACHES, ESTOPPEL, ETC.

The decree in case No. 1218 bears date February 18, 1890, and the opinion was filed on that day; in case No. 1248 the decree bears date May 12, 1890, and the opinion was then filed. Although the opinions are by differ

ent judges, it is evident that the cases were similarly presented before them. In No. 1248 the court says (pp. 238):

> And even admitting what is denied by the plea that these certificates are false in fact and were procured by the fraud of the wagon road company, and that these defendants had notice of the same when they made the purchase, and therefore the complainant is not estopped to show these facts in any litigation between it and them in which they may be pertinent and material, still by the deliberate action of the complainant the inquiry has become immaterial.

On page 240 the court says:

> These alone are probably sufficient reasons for dismissing this bill. But the conclusions reached on the first plea make it certain, in the judgment of this court, that the complainant can not and ought not to prevail in this suit, first, because the claim is clearly a stale one, and also by analogy to the statute of limitations is barred by the lapse of time; second, because by the act of 1874 it has either accepted the certificate as conclusive evidence of the due construction of the road or thereby waived all further performance of the condition subsequent; and, third, by the action of its executive department prior to 1883, whereby it distinctly recognized and accepted the performance of such condition, and thereby induced these defendants to so alter their position in relation to the property that it would be unconscionable and unjust now to allege the contrary to their serious injury and prejudice.

In case No. 1218 the court says (p. 79):

> The remaining question to be considered and the the only one presented upon which there is any room

> for doubt is whether complainants should be permitted to reply to the pleas, or whether the bill should be dismissed. Upon the whole, after careful consideration, I think the bill should be dismissed. I think it in the hightest degree probable that such would be the final result whichever course is pursued. If so, the expense and annoyance of a long litigation would be fruitless.

As case No. 1219 was disposed of similarly to No. 1218 (Op., p. 67) the same question was, of course, decided in the same way.

Here we have the striking conclusions that, admitting that the certificates were false in fact and were procured by fraud, and that the defendants had notice of it when they purchased, still as to the complainant in this case these things are immaterial; that the United States can not and ought not to prevail, because the claim is stale; because it is barred by lapse of time; because it has either accepted the certificate or waived further performance; because by its acts it has induced defendants to alter their positions.

And the United States is told that it may not even reply to the pleas and test their truth, and why? Because (the Judge says):

> Upon the whole, after careful consideration, I think that the bill should be dismissed. I think it in the highest degree probable that such would be the final result whichever course is pursued. If so, the expense and annoyance of a long litigation would be fruitless.

This was the earliest case and the pioneer decision, and the others followed directly after.

All of this sounds quite strangely when it is remembered that the court below holds that the road was not required to be built as to width, clearing, bridges, track, turnouts, or ferries, in accordance with the laws of Oregon, and that the road was not required to be maintained even for a day, and when it is remembered that as to the Dalles Road case (No. 1218) the company takes 1,920 acres of land per mile for building 356 miles of such a road, and when it is remembered that as to the Albany road grant (No. 1248) the Willamette Valley and Coast Railroad Company is contending with Weill to compel him to accept their continuing tender of $450,000 for his interest in the lands which he refuses, while the Oregon and Pacific Railroad Company attaches the lien of their $15,000,000 of bonds to this land and says through the defendant, The Farmers' Loan and Trust Company (p. 142):

> That said land grant is and has always been considered to be of very large value and a large and important part of the consideration on the strength of which its beneficiaries, namely, the bondholders of said bonds advanced their money for the same.

When these things are recalled counsel may be permitted to infer that the court below gave undue consequence to the "expense and annoyance" of a lawsuit.

The assumption of the defendants in these cases that the United States "induced" them to occupy their present positions in relation to these land grants, and that the Government is pressing against them a stale claim, and that the acts of Congress and of executive officers have estopped the Government from testing its rights before the

courts, and that even the right of reply in a suit commanded by the people through Congress is denied, is offensive in the highest degree.

The people of Oregon have long been seeking relief from these companies that have separated the State into four sections by the broad and tortuous belts of reserved lands that they have obtained without compensation. Legislative and departmental investigations have repeatedly been made; high national officials have called attention to the wrong done by the acquirement of large portions of the national domain by the unlawful acts of these land companies; and yet they come and answer that the United States is estopped by its leniency from testing, as a litigant, its rights in the courts.

It is shown distinctly and at length in case No. 1248, by the defendants themselves, that the facts as to the construction of the road have been for a long time under controversy; that whether any road whatever was constructed upon this line has been disputed for a long time; that a special agent, sent to examine the road, failed to find, for a long distance, anything that was a road even in name; that his report was sustained by numerous affidavits made by men living in the neighborhood of the line of the road.

Although counter-affidavits are also filed sustaining the position of the defendants, it is beyond question a matter of very serious contention among those who have made a careful examination of the subject, whether for hundreds of miles upon their line any road whatever was ever constructed.

These facts appear in the record pp. 57 to 131, and the views entertained on the part of complainant appear especially from pp. 61 to 90.

It appears that in March, 1878, one Elisha Barnes wrote to the Secretary of the Interior from Prineville, Oregon, charging that the road had not been constructed, and that for 300 miles of it there had been no attempt to open or construct any road.

April 27, 1880, the land commissioner called the attention of the Secretary of the Interior to this communication.

August 16, 1880, the acting commissioner directed one W. F. Prosser to act as special agent and make a personal examination of the road.

October 30, 1880, Prosser made a report wherein at length he sets forth the result of his examination.

The distance from Cache Creek to the eastern boundary of the State is stated to be 350 miles. Prosser says the process of construction over this portion was very simple; that it consisted simply of a party of men, most of whom were on horseback, going through the country with a wagon at the rate of 10 or 15 miles per day, blazing their way when passing through the open timber, doing a little grading at different points, breaking down the sage brush where it was too high for the wagon to pass over it, finding fordable places in the streams, and putting stakes in the ground, which were supposed to be a mile apart (p. 72).

This agent traced the road until it disappeared at the South Fork of the Malheur River. A careful examination showed some evidences of a road, such as the removal

of loose stones, and by following through the sage brush the direction the party were most likely to take and through the most available opening through a long hollow or ravine, Prosser came upon a little grading about a mile east of the stream, and this was the last trace he could discover of the line of the road. As it was impossible to follow any remaining traces which might have been left by the locating party 10 or 11 years before in the bunch grass and sage brush, he returned back (p. 75).

> From Cache Creek eastward to the State line it is very manifest that the terms of the grant have not been complied with; no road has been made worthy of the name, and, therefore, neither the original company nor the present owners are entitled to hold any land whatever for that portion of the line (p. 76).

He reports (77) that at least from Cache Creek to the Idaho line, a distance of 350 miles, the road has not been constructed. This report is accompanied in the record by nine affidavits, in which his statements against the road are more than supported.

January 6, 1881, the Secretary of the Interior recommended a resumption by the United States of the lands granted, so far at least as they had not been patented, or such legislation as would assure a compliance with the terms of the grant (p. 86).

Early in 1882 the President of the United States transmitted a communication from the Secretary of the Interior, covering information respecting this land grant, to Congress and the subject was again considered (p. 123).

The committee reported (129) that in the opinion of the committee the Executive Department had ample au-

thority to investigate and, if deemed necessary, to institute legal proceedings to secure a forfeiture of the said grant of lands for noncompliance with the terms of the grant or any fraud, evasion, etc., on the part of the constructing company without legislation or instruction from the legislative department, and added: "It is simply impossible for your committee to make such an investigation as will justify definite action by Congress."

The Secretary of the Interior (July, 1882), in a report to which the defendants seem to attach much consequence, says (131):

> I have examined the conflicting affidavits and have also listened to arguments and statements of the appearance and present condition of the road. While the evidence of the construction is conflicting as to portions of the line, the preponderance seems to be in favor of the conclusion that the road was actually built.

It therefore appears that at this date the controversy as to the actual construction of the road existed and continued.

All of these matters appear in the exhibits placed in the record by the defendants in presenting their case.

It is true that some portions of the lands were patented after the date last given, but the contention did not at any time cease.

The memorials of the legislature of the State of Oregon, passed in 1885 and 1887 (hereinbefore printed), are public proofs of the continuance of the struggle.

It is true that the Government moved slowly, but it did not abandon the public interests or assent to the claims of the defendants or induce them to change their position.

It is a matter of general public knowledge as well as of public documentary record that March 13, 1888, the Secretary of the Interior reported to the President of the United States the results of an investigation made upon the suggestion of the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, of the three land grants which are the subjects of the eight suits now before this court.

The report is accompanied by a large amount of printed testimony and is limited to the three wagon roads here involved in cases Nos. 1218, 1219, and 1248.

The Secretary says of the report of the investigation :

> It shows that a personal examination of said roads has been made as directed, and that a large mass of testimony was taken at different points in said State, which has been transcribed at length and is also herewith transmitted.
>
> The testimony is mainly that of witnesses living along these roads. In this investigation the road companies were represented by attorneys who cross-examined witnesses and submitted testimony on their own behalf.
>
> This testimony appears to conclusively establish that none of these wagon-roads were constructed according to law, and that by a rightful administration of the grants and the trust no lands should ever have become the property of the companies on whom they were attempted to be bestowed by the State.

The following is the message of the President sent to Congress, transmitting said report (see Ex. Doc. No. 124, Fiftieth Congress, first session):

To the Senate and House of Representatives:

I transmit herewith a communication of the 13th instant from the Secretary of the Interior, with accompanying papers, and submitting the draft of a proposed bill to forfeit lands granted to the State of Oregon for the construction of certain wagon roads, and for other purposes.

The presentation of facts by the Secretary of the Interior, herewith transmitted, is the result of an examination made under his direction, which has developed, as it seems to me, the most unblushing frauds upon the Government, which, if remaining unchallenged, will divert several hundred thousand acres of land from the public domain and from the reach of honest settlers to those who have attempted to pervert and prostitute the beneficent designs of the Government. The Government sought, by the promise of generous donations of land, to promote the building of wagon roads for public convenience and for the purpose of encouraging settlement upon the public lands. The roads have not been built, and yet an attempt is made to claim the lands under a title which depends for its validity entirely upon the construction of these roads.

The evidence which has been collected by the Secretary of the Interior, plainly establishing this attempt to defraud the Government and exclude the settlers who are willing to avail themselves of the liberal policy adopted for the settlement of the public lands, is herewith submitted to the Congress, with the recommendation that the bill which has been prepared, and which is herewith transmitted, may become a law

and with the earnest hope that the opportunity thus presented to demonstrate a sincere desire to preserve the public domain for settlers, and to frustrate unlawful attempts to appropriate the same, may not be neglected.

GROVER CLEVELAND.

EXECUTIVE MANSION,
March 20, 1888.

The act of 1889 is the result of this long-continued controversy, and it is respectfully submitted that a real trial, that shall bring to the light of judicial scrutiny all of the material facts connected with the building of these roads, the obtaining of the governors' certificates and the actual earning or the fraudulent acquirement of these 2,000,000 acres of land, should not be denied.

VIII.

THE REFUSAL OF PERMISSION TO REPLY.

It is considered a ground of serious and just complaint that the court below refused to permit a reply to the pleas. (Rec. No. 1218, p. 79.)

That these important suits, originated as they were, and based in the bills of complaint upon charges of false representation and fraudulent acts, and affecting in their results large State and national interests, should be strangled at the very threshold for the reasons stated in this opinion, is believed to be a serious error.

The complainant should be allowed to test by trial the truth of the allegations of the pleas.